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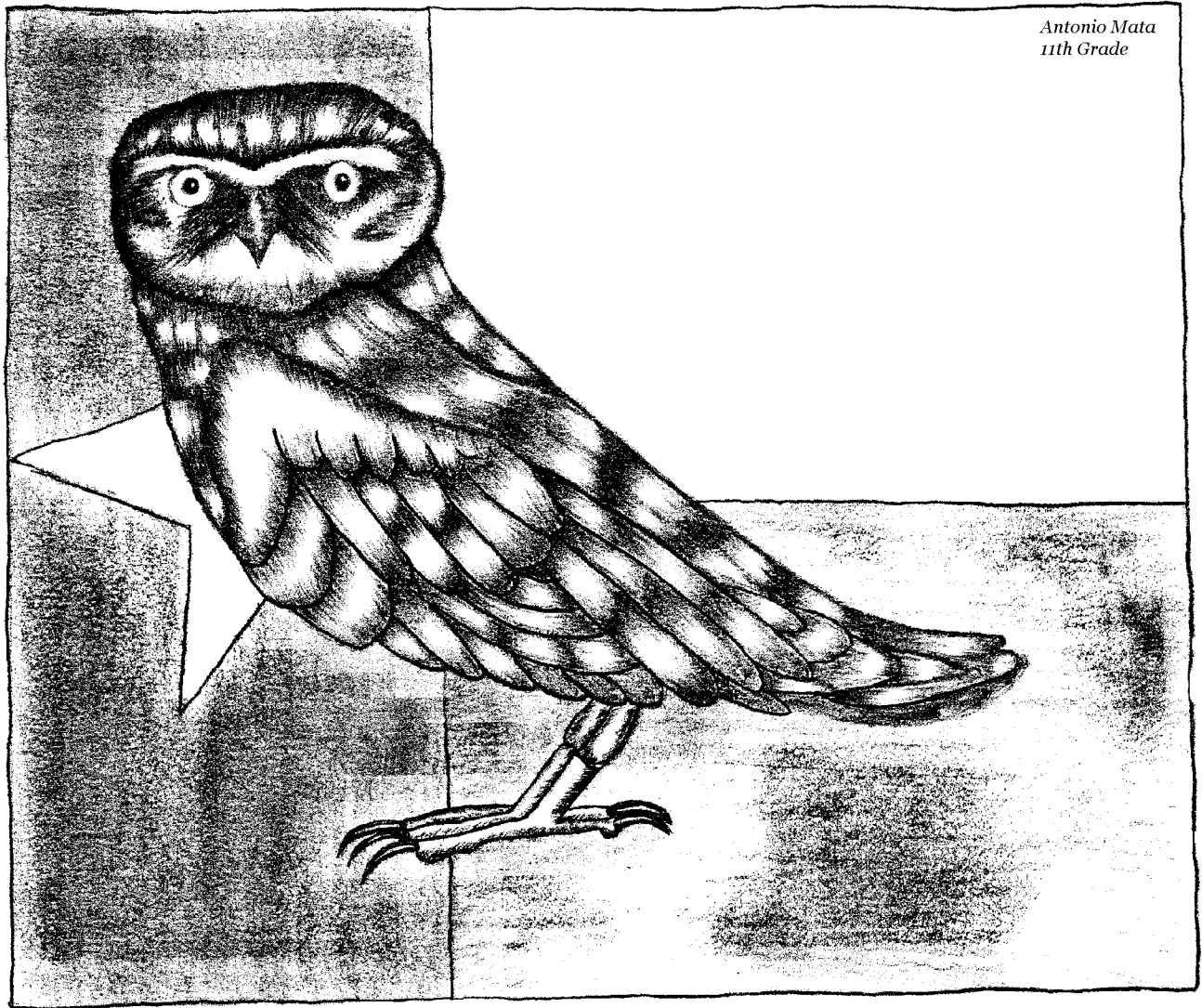
# TEXAS REGISTER

*Volume 31 Number 3*

*January 20, 2006*

*Pages 347-440*

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*Antonio Mata  
11th Grade*

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:  
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: [Subadmin@sos.state.tx.us](mailto:Subadmin@sos.state.tx.us)

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:  
<http://www.state.tx.us/>

...

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE GOVERNOR

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As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

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Proclamation 41-3040

TO ALL WHOM THESE PRESENTS SHALL COME:

I, Rick Perry, Governor of Texas, do hereby certify that 254 counties in the State of Texas are threatened by high or extreme fire hazard. This threat was caused by drought across the state.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby proclaim the existence of such disaster and direct that all necessary measures both public and private as authorized under Section 418.015 of the code be implemented to meet that disaster.

In accordance with the Statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 27th day of December, 2005.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200600045

◆ ◆ ◆

# THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are

requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

## Request for Opinions

### RQ-0427-GA

#### Requestor:

Mr. Michael W. Behrens, P.E.

Executive Director

Texas Department of Transportation

125 East 11th Street

Austin, Texas 78701-2483

Re: Installation of video cameras on state highway rights-of-way to enforce compliance with traffic signals (RQ-0427-GA)

#### Briefs requested by February 6, 2006

### RQ-0428-GA

#### Requestor:

Mr. James R. Huffines

Chair, Board of Regents

The University of Texas System

201 West Seventh Street

Austin, Texas 78701-2902

Re: Whether competitive bidding is required for procurement of printing services by a state university (RQ-0428-GA)

#### Briefs requested by February 6, 2006

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200600156

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: January 11, 2006



## Opinions

### Opinion No. GA-0383

The Honorable Mike Stafford

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002

Re: Whether a commissioners court may pay a vendor who has rendered goods or services to the county for the reasonable value of the benefit the county has received under an implied contract when the county auditor has rejected the claim (RQ-0354-GA)

## SUMMARY

Section 113.065 of the Local Government Code prohibits a county auditor from approving a claim for the reasonable value of services received under an implied contract that was not "incurred as provided by law." TEX. LOC. GOV'T CODE ANN. §113.065 (Vernon 1999). Attorney General Opinion GA-0247, which concludes that a county auditor is forbidden by law to approve a claim on a payment that was not "incurred as provided by law," as section 113.065 requires, is affirmed.

The county auditor's approval is a "condition precedent" to the commissioners court's review of the claim. *Crider v. Cox*, 960 S.W.2d 703, 706 (Tex. App.-Tyler 1997, writ denied). Without the county auditor's approval, the county commissioners court may not review and approve the claim, even if the claim is presented to the court under section 89.004(a) of the Local Government Code. See TEX. LOC. GOV'T CODE ANN. §89.004(a) (Vernon Supp. 2005). Similarly, the county commissioners court may not audit or settle any account under section 115.021 of the Local Government Code unless the county auditor has reviewed and approved the account consistently with sections 113.064 and 113.065. See *id.* §115.021 (Vernon 1999).

Consequently, unless the county auditor has approved the claim, a commissioners court may not pay a vendor who has rendered goods or services to the county for the reasonable value of the benefit the county has received under an implied contract.

### Opinion No. GA-0384

Ms. Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

333 Guadalupe Street, Suite 3-600

Austin, Texas 78701-3943



Re: Whether federal law preempts a portion of Senate Bill 410, enacted during the regular session of the Seventy-ninth Legislature, that purports to authorize the importation of Canadian pharmaceuticals into Texas, and to require the State Board of Pharmacy to assist in such importation (RQ-0355-GA)

#### **S U M M A R Y**

Sections 36 through 43 of Senate Bill 410, enacted during the Seventy-ninth regular session of the Texas Legislature, directly conflict with federal law, namely the Federal Food, Drug, and Cosmetic Act, chapter 9 of title 21 of the United States Code (the "FFDCA"), and specifically sections 381 and 384 thereof. The FFDCA makes it an offense not only to import, but to "cause" the importation of prohibited medications. *See* 21 U.S.C. §331 (2000 & Supp. 2003). By "designating" certain Canadian pharmacies, promoting them on its website, and expressly permitting Texas consumers to import prescription drugs that cannot be imported under federal law, the Texas State Board of Pharmacy would violate the Federal Food, Drug, and Cosmetic Act, as will Texas consumers and those Texas pharmacies that take part in such transactions.

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us) or call the Opinion Committee at (512) 463-2110.*

TRD-200600057  
Stacey Schiff  
Deputy Attorney General  
Office of the Attorney General  
Filed: January 4, 2006



#### **Opinions**

##### **Opinion No. GA-0385**

The Honorable Kurt Sistrunk  
Galveston County Criminal District Attorney  
722 Moody, Suite 300  
Galveston, Texas 77550

Re: Whether a nonprofit organization that sponsors a "poker run" violates gambling statutes (RQ-0357-GA)

#### **S U M M A R Y**

A nonprofit organization would violate Penal Code section 47.03(a)(3) and (5) by sponsoring a "poker run" in which participants are entitled to receive a five-card hand for each \$10 donation they make to a charitable cause and will receive cash prizes for the best, second best, and worst hands.

##### **Opinion No. GA-0386**

The Honorable Joe Nixon  
Chair, Committee on Civil Practices  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Whether a legislator may simultaneously serve as president of a municipal management district operating under chapter 375, Local Government Code (RQ-0385-GA)

#### **S U M M A R Y**

Article XVI, section 40(d) of the Texas Constitution prohibits an employee of a municipal management district operating under Local Government chapter 375 from simultaneously serving as a member of the Texas Legislature. This constitutional provision does not prohibit an individual who works as an independent contractor for a municipal management district from simultaneously serving as a member of the legislature. Attorney General Letter Opinion 90-55A is overruled.

##### **Opinion No. GA-0387**

The Honorable Mike Stafford  
Harris County Attorney  
1019 Congress, 15th Floor  
Houston, Texas 77002

Re: Whether Government Code section 51.961(g), which requires one-half of the family protection fee collected in divorce suits to be deposited in the child abuse and neglect prevention trust account, violates the open courts provision, Texas Constitution article I, section 13 (RQ-0362-GA)

#### **S U M M A R Y**

Government Code section 51.961(g), as amended by the Seventy-ninth Legislature, requires one-half of a fee collected in a suit for dissolution of marriage to be deposited to the credit of the child abuse and neglect prevention trust fund account, which is used to fund child abuse and neglect prevention programs carried out by the Department of Family and Protective Services. Pursuant to the open courts provision of the Texas Constitution, article I, section 13, filing fees may only be used for judicial support services. Section 51.961(g) allocates filing fees to purposes other than judicial support services and, therefore, imposes an unconstitutional burden on a litigant's right of access to the courts in violation of article I, section 13.

##### **Opinion No. GA-0388**

The Honorable Cheryl Swope Lieck  
Chambers County Attorney  
Post Office Box 1200  
Anahuac, Texas 77514

Re Whether Chambers County has authority to contract with a bank to invest and manage its permanent school fund (RQ-0364-GA)

#### **S U M M A R Y**

Chambers County may not contract with a bank to invest and manage its permanent school fund.

##### **Opinion No. GA-0389**

The Honorable David K. Walker  
Montgomery County Attorney  
207 West Phillips  
Conroe, Texas 77301

Re: Whether section 693.002 of the Health and Safety Code requires a justice of the peace to allow an organ procurement organization to remove organs of a deceased person before the justice of the peace has determined whether an autopsy should be performed (RQ-0365-GA)

#### **S U M M A R Y**

In a case in which a decedent has died under circumstances requiring an inquest and the family consents to organ removal, section 693.002(a)(5) of the Health and Safety Code requires a justice of the

peace who has not yet determined whether an autopsy is necessary or whether organ removal will interfere with the investigation or the autopsy to attend the procedure to remove organs or to send a designated physician. During the procedure, the justice of the peace or designated physician may deny organ removal. By requiring a justice of the peace or designated physician to attend an organ removal procedure, section 693.002(a)(5) in effect authorizes an organ procurement organization that schedules a procedure to require a justice of the peace who has not yet made the decision regarding organ removal to do so at a time and place determined by the organization.

If a justice of the peace or designated physician is required to be present at the hospital to examine the body either before or during the organ removal procedure in order to perform a duty relating to organ removal under section 693.002(a), section 693.002(a)(6) provides for the organ procurement organization to reimburse the county for actual costs, not to exceed \$1,000. Section 693.002(a)(6) does not provide for costs to be paid by a tissue procurement organization for duties required by section 693.002(c), which relates to tissue removal.

Section 693.002 authorizes a justice of the peace to make an independent determination regarding whether organs or tissue may be removed. A district attorney may not require a justice of the peace to deny organ or tissue removal.

**Opinion No. GA-0390**

The Honorable Lawrence F. Harrison

Kimble County Attorney

Post Office Box 385

Junction, Texas 76849

Re: Whether a deputy sheriff is an "individual who acts in any capacity for a permitting authority" for purposes of title 30, section 285.50(g)

of the Texas Administrative Code, which prohibits such persons from working as an installer for an on-site sewage facility within the permitting authority's jurisdiction (RQ-0366-GA)

**S U M M A R Y**

Title 30, section 285.50(g)(2) of the Texas Administrative Code prohibits an individual who "acts in any capacity for a permitting authority" from working as an on-site sewage facility installer within the permitting authority's jurisdiction. The Texas Commission on Environmental Quality interprets this rule to apply to a deputy sheriff in a county where the county is the permitting authority. Because the language "in any capacity for" may be construed to mean every or all duties, positions, or roles on behalf of or to the benefit of the permitting authority, the Commission's interpretation is not clearly erroneous or inconsistent with the rule's language. Accordingly, we defer to the Commission's interpretation and conclude that a deputy sheriff is an individual who "acts in any capacity for a permitting authority" when the county for which the deputy provides law enforcement services is the on-site sewage facility permitting authority.

*For further information, please access the website at [www.oag.state.tx.us](http://www.oag.state.tx.us). or call the Opinion Committee at (512) 463-2110.*

TRD-200600128

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: January 10, 2006

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# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 20. COTTON PEST CONTROL SUBCHAPTER C. STALK DESTRUCTION PROGRAM

##### 4 TAC §20.22

The Texas Department of Agriculture (the department) adopts on an emergency basis, amendments to §20.22, concerning the authorized cotton destruction date for Pest Management Zone 9 and the cotton destruction method for Pest Management Zone 10.

The department is acting on behalf of cotton farmers in Pest Management Zones 9 and 10. Zone 9 includes Pecos, Reeves and Ward counties. Zone 10 includes El Paso County and that portion of Hudspeth County bounded by Interstate Highway 10 on the north, the El Paso County line on the west, the Rio Grande River on the south and a line from old Fort Quitman, north along Highway 34 to Interstate 10 on the east.

The current cotton destruction deadline for Zone 9 is February 1, 2006. The cotton destruction deadline for this zone will be delayed until March 1, 2006, by this emergency rule amendment. The current cotton destruction method for Zone 10 is shredding and plowing and completely burying the stalk. The requirement to completely bury the stalk will be removed by this emergency rule amendment. The department believes that changing the cotton destruction date for Zone 9 and the destruction method for Zone 10 is both necessary and appropriate.

Due to drought conditions and changes in production practices in Zones 9 and 10, producers will need more time to perform destruction activities in Zone 9 and the requirement to bury the cotton stalk in Zone 10 is not needed. A separate proposal will be published that will adopt these same changes on a permanent basis. A failure to act to delay the cotton destruction deadline for Zone 9 and to modify the destruction requirements for Zone 10 could create a significant economic loss to Texas cotton producers in these zones and thereby affect the state's economy.

The amendments to §20.22 are adopted on an emergency basis under the Texas Agriculture Code, §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests; and the Government Code, §2001.34,

which provides for the adoption of agency rules on an emergency basis, without notice and comment.

##### §20.22. Stalk Destruction Requirements.

(a) Deadlines and methods. All cotton plants in pest management zones 1-8 shall be rendered non-hostable by the stalk destruction dates indicated for the zone. Destruction shall periodically be performed to prevent the presence of fruiting structures. Destruction of all cotton plants shall be accomplished in Zone 9 by shredding and in Zone 10 by shredding and plowing [and completely burying the stalk]. Soil should be tilled to a depth of 6 or more inches in Zone 10.

Figure: 4 TAC §20.22(a)

(b) - (e) (No change.)

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 9, 2006.

TRD-200600120

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective Date: January 9, 2006

Expiration Date: April 8, 2006

For further information, please call: (512) 463-4075

## TITLE 16. ECONOMIC REGULATION

### PART 1. RAILROAD COMMISSION OF TEXAS

#### CHAPTER 7. GAS SERVICES DIVISION SUBCHAPTER B. SPECIAL PROCEDURAL RULES

##### 16 TAC §7.46

The Railroad Commission of Texas files its Notice of Renewal of Effectiveness of Emergency Action with respect to emergency rule §7.46, relating to Relief for Victims of Hurricane Katrina, adopted on an emergency basis on September 27, 2005, for an initial effective period of 120 days. The emergency rule was published in the October 14, 2005, issue of the *Texas Register*, and is effective from September 27, 2005, through January 24, 2006. In support of extending the period of effectiveness of emergency rule §7.46, the Commission makes the following findings:

1. On Monday August 29, 2005, Hurricane Katrina struck the Gulf Coast of the United States causing significant damage in Louisiana, Mississippi and Alabama.

2. The destruction of large areas of the U.S. Gulf Coast by Hurricane Katrina caused tens of thousands of displaced residents to be evacuated or relocated to Texas. Many of these persons may not be able to return to their homes for an indefinite length of time.

3. On September 1, October 3, October 31, and December 1, 2005, Governor Perry issued disaster proclamations certifying that Hurricane Katrina created and continues to create emergency conditions for the people of Texas.

4. A potential hurdle for evacuees trying to transition to more permanent housing will be deposits for utility services. Under the Commission's current rules, a deposit for residential gas service can equal two months of service. Many evacuees who might otherwise have had the means to pay a deposit may still be cut off from bank accounts and other financial resources. Many of those on fixed incomes may still be cut off from retirement and other benefits such as Social Security and Veteran's benefits. Finally, many of the evacuees are low-income and simply will not have the financial means to pay a service deposit now that they are homeless and may still be unemployed.

5. Waiving deposit requirements for gas utility service at this time and allowing evacuees to establish satisfactory credit simply by demonstrating their status as a victim of this disaster would remove a significant hurdle for individuals moving out of temporary housing, and is therefore a reasonable and necessary step to help these stranded people regain control of their lives.

6. Because Texas Utilities Code, §104.005, provides that a gas utility may not charge or receive from a person a lesser compensation for a service than the compensation prescribed by the applicable schedule of rates, and a person may not knowingly receive or accept a service from a gas utility for a lesser compensation than that prescribed by the schedules, it is necessary and appropriate for the Commission to adopt a rule authorizing utilities to deviate from the deposit requirements and amounts set forth in their tariffs, to the extent permitted in the emergency rule.

7. Many of the persons who have evacuated to Texas may still have limited means of identifying themselves as having been displaced from their homes due to Hurricane Katrina. Accordingly, it is the Commission's intent that, in determining whether a person has evacuated to Texas as a result of Hurricane Katrina, gas utilities recognize a driver's license from Alabama, Louisiana, and Mississippi, or documentation of a person's status as a claimant of benefits offered by FEMA; the American Red Cross or other recognized, legitimate private relief agency; or a state or local jurisdiction or other public aid agency as sufficient to obtain the benefits of the emergency rule.

8. It is the intent of the Commission that emergency rule §7.46 be effective for an additional period of 60 days following the initial effective period of 120 days.

Issued in Austin, Texas on December 13, 2005.

Filed with the Office of the Secretary of State on January 5, 2006.

TRD-200600064

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Original Effective Date: September 27, 2005

Expiration Date: March 25, 2006

For further information, please call: (512) 475-1295

## PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

### CHAPTER 82. BARBERS

#### 16 TAC §82.2

The Texas Department of Licensing and Regulation is renewing the effectiveness of the emergency adoption of new §82.2, concerning emergency provisional certificates and licenses in the barbers program for a 60-day period. The text of the new section was originally published in the September 23, 2005, issue of the *Texas Register* (30 TexReg 6000).

Filed with the Office of the Secretary of State on January 5, 2006.

TRD-200600065

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Original Effective Date: September 8, 2005

Expiration Date: March 6, 2006

For further information, please call: (512) 463-7348

### CHAPTER 83. COSMETOLOGISTS

#### 16 TAC §83.2

The Texas Department of Licensing and Regulation is renewing the effectiveness of the emergency adoption of new §83.2, concerning emergency provisional certificates and licenses in the cosmetologists program for a 60-day period. The text of the new section was originally published in the September 23, 2005, issue of the *Texas Register* (30 TexReg 6001).

Filed with the Office of the Secretary of State on January 5, 2006.

TRD-200600066

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Original Effective Date: September 8, 2005

Expiration Date: March 6, 2006

For further information, please call: (512) 463-7348

## TITLE 22. EXAMINING BOARDS

### PART 23. TEXAS REAL ESTATE COMMISSION

#### CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER A. GENERAL PROVISIONS RELATING TO THE REQUIREMENTS OF LICENSURE

#### 22 TAC §535.4

The Texas Real Estate Commission renews for an additional 60-day period new §535.4, concerning a Temporary Emergency Salesperson License, adopted on an emergency basis as pub-

lished in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6149).

The renewed rule outlines the process and conditions the Commission is using to issue a Temporary Emergency Salesperson License. This new license type is only available to those licensed real estate brokers and salespersons affected by Hurricane Katrina in specific states and applying for a license in Texas. A license issued under this rule will be temporary and valid until March 31, 2006. An applicant must be a licensed broker or salesperson in good standing in the affected states and must be sponsored by a Texas licensed broker. A simplified application process is outlined in the rule.

As a result of the Emergency Disaster Proclamations by the Governor of the State of Texas dated September 1, 2005, October 3, 2005, October 31, 2005, and December 1, 2005, declaring a state of emergency due to Hurricane Katrina, the Texas Real Estate Commission has determined that the conditions outlined in §2001.034 of the Texas Government Code concerning Emergency Rulemaking have been satisfied to renew the adoption of the rule concerning the issuance of Temporary Emergency Salesperson Licenses to applicants from counties or parishes in Louisiana, Mississippi, and Alabama who practice or reside in areas affected by Hurricane Katrina.

The reasoned justification for the renewal of the emergency rule is to permit displaced licensees to apply for a temporary real estate license for another 60-day period in Texas as they continue to reside in this state because of the disaster created by Hurricane Katrina.

The emergency rule is renewed for an additional 60-day period under the Real Estate License Act (the Act), Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by the new section is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the renewal of the new section.

Filed with the Office of the Secretary of State on January 6, 2006.

TRD-200600102

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Original Effective Date: September 13, 2005

Expiration Date: March 11, 2006

For further information, please call: (512) 465-3900



## SUBCHAPTER R. REAL ESTATE INSPECTORS

### 22 TAC §535.211

The Texas Real Estate Commission renews for an additional 60-day period new §535.211, concerning a Temporary Emergency Real Estate Inspector License, adopted on an emergency basis as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6150).

The renewed rule outlines the process and conditions the Commission is using to issue a Temporary Emergency Real Estate Inspector License. This new license type is only available to those licensed home inspectors affected by Hurricane Katrina in specific states and applying for a license in Texas. An applicant must be licensed in good standing in the affected states, must show proof of completion of 8 classroom hours related to the study of Texas Standards of Practice and Rules of the Real Estate Commission, and must be sponsored by a Texas Professional Inspector. A license issued under this rule is temporary and valid until February 28, 2006. A simplified application process is outlined in the rule.

As a result of the Emergency Disaster Proclamations by the Governor of the State of Texas dated September 1, 2005, October 3, 2005, October 31, 2005, and December 1, 2005, declaring a state of emergency due to Hurricane Katrina, the Texas Real Estate Commission has determined that the conditions outlined in §2001.034 of the Texas Government Code concerning Emergency Rulemaking have been satisfied to renew the adoption of the rule concerning the issuance of Temporary Emergency Real Estate Inspector Licenses to applicants from counties or parishes in Louisiana, Mississippi, and Alabama who practice or reside in areas affected by Hurricane Katrina.

The reasoned justification for the renewal of the emergency rule is to permit displaced licensees to apply for a temporary home inspector license for another 60-day period in Texas as they continue to reside in this state because of the disaster created by Hurricane Katrina.

The emergency rule is renewed for an additional 60-day period under the Real Estate License Act (the Act), Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statute affected by the new section is Texas Occupations Code, Chapter 1102. No other statute, code or article is affected by the renewal of the new section.

Filed with the Office of the Secretary of State on January 6, 2006.

TRD-200600103

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Original Effective Date: September 13, 2005

Expiration Date: March 11, 2006

For further information, please call: (512) 465-3900



# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 4. AGRICULTURE

### PART 1. TEXAS DEPARTMENT OF AGRICULTURE

#### CHAPTER 20. COTTON PEST CONTROL

The Texas Department of Agriculture (the department) proposes amendments to §§20.1, 20.20 and 20.22, concerning cotton pest control and cotton stalk destruction (CSD) requirements. The amendments are proposed to update and clarify definitions used in Chapter 20, reclassify Pest Management Zone 5 as Zone 3 Area (3), and strengthen enforcement of the CSD deadline.

Amendments to §20.1 are proposed to clarify the definition of non-hostable as it relates to cotton in the field for enforcement purposes, and to strengthen the definition of volunteer cotton by removing references to when incidental seeds might have germinated.

Amendments to §20.20 are proposed in response to producer requests from Zone 5. The proposed amendments will strengthen the CDS program in Zone 5 by reclassifying Zone 5 as Area (3) of Zone 3. This change will benefit producers in the affected counties by maintaining their locally appropriate planting and stalk destruction dates while improving their organizational situation. Because adjacent counties in Zone 3 share similar production practices as in Zone 5, combining these zones will allow for coordinated decision-making about CDS requirements. Old Zone 5 is deleted from the rule.

Amendments to §20.22 are proposed to implement the unanimous request of the Zone 9 Cotton Producer Advisory Committee (CPAC) to delay their CSD deadline until March 1 and the unanimous request of the Zone 10 CPAC to modify their stalk destruction requirements to reflect modern production practices in that area. Other amendments proposed for §20.22 are to refine procedures for processing electronically transmitted requests for individual extensions and to clarify the standards for granting individual extensions for fields that have been declared a public nuisance by the department. By amending these sections, the department ensures efficient functioning of the CSD program.

Dr. Robert Crocker, Coordinator for Pest Management and Citrus Programs, has determined that for the first five-year period the proposed amendments are in effect, there will be no anticipated fiscal impact for state or local governments as a result of administering or enforcing the rules, as amended.

Dr. Crocker also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of administering and enforcing the amended sections is greater efficiency in the suppression of

overwintering populations of boll weevils. The amendments also benefit the public by reducing the risk of artificial re-infestation of restricted areas by boll weevils, thereby protecting the investment that cotton producers and the State of Texas have made to eradicate the pest. There is no cost anticipated to micro-businesses, small businesses or individuals required to comply with the amendments.

Comments on the proposal may be submitted in writing to Dr. Robert Crocker, Coordinator for Pest Management and Citrus Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*.

#### SUBCHAPTER A. GENERAL PROVISIONS

##### 4 TAC §20.1

The amendments to §20.1 are proposed in accordance with the Texas Agriculture Code (the Code), §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; and §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests.

The code that is affected by the proposal is Texas Agriculture Code, Chapter 74, Subchapter A.

##### §20.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

(1) - (18) (No change.)

(19) Non-hostable--Refers to cotton in the field that is free of living, normally colored (not wilted or darkened) fruiting structures including [such as] buds, squares, flowers, uncracked bolls or unopened bolls.

(20) - (30) (No change.)

(31) Volunteer cotton--For purposes of this chapter, cotton developing from incidental seeds [after the growing season between harvest and planting the next year's crop].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 9, 2006.

TRD-200600121

Dolores Alvarado Hibbs  
Deputy General Counsel  
Texas Department of Agriculture  
Earliest possible date of adoption: February 19, 2006  
For further information, please call: (512) 463-4075

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**SUBCHAPTER C. STALK DESTRUCTION PROGRAM**

**4 TAC §20.20, §20.22**

The amendments to §20.20 and §20.22 are proposed in accordance with the Texas Agriculture Code (the Code), §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; and the Code, §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other cotton parts and products of host plants for cotton pests.

The code that is affected by the proposal is the Texas Agriculture Code, Chapter 74, Subchapter A.

**§20.20. Pest Management Zones.**

- (a) (No change.)
- (b) Zones. Established zones include the following counties:
  - (1) - (7) (No change.)

(8) Zone 3 Area (3). Chambers, Colorado, Fayette, Galveston, Gonzales, Harris, Jefferson, Lavaca, Liberty, Orange, Waller, and Washington.

(9) [(8)] Zone 4. Atascosa, Bexar, DeWitt, Dimmit, Frio, Karnes, Kinney, Maverick, Medina, Uvalde, Val Verde, Wilson, and Zavala.

[(9) Zone 5. Chambers, Colorado, Fayette, Galveston, Gonzales, Harris, Jefferson, Lavaca, Liberty, Orange, Waller, and Washington.]

- (10) - (15) (No change.)

**§20.22. Stalk Destruction Requirements.**

(a) Deadlines and methods. All cotton plants in pest management zones 1-8 shall be rendered non-hostable by the stalk destruction dates indicated for the zone. Destruction shall [periodically] be performed periodically to prevent the presence of fruiting structures. Destruction of all cotton plants shall be accomplished in Zone 9 by shredding and in Zone 10 by shredding and plowing [and completely burying the stalk]. In Zone 9, destruction shall be performed as necessary to keep cotton non-hostable. In Zone 10, soil must [Soil should] be tilled to a depth of 6 or more inches and destruction shall be performed as necessary to prevent regrowth and volunteer cotton [in Zone 10].

Figure: 4 TAC §20.22(a)

- (b) Deadline extensions.
  - (1) - (5) (No change.)

(6) All requests for extensions shall be postmarked (if mailed) or automatically date stamped (if electronically transmitted) on or prior to the cotton destruction deadline. However, if a field is in compliance with destruction requirements on the deadline, but later is in violation due to regrowth or volunteer cotton with fruiting structures as a result of extended periods of wet weather that does not allow for

mechanical destruction, an extension request may be submitted after the deadline. Once a field has been declared a public nuisance by the department, no extension requests will be granted for that field until after the field has become compliant.

- (c) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 9, 2006.

TRD-200600122

Dolores Alvarado Hibbs  
Deputy General Counsel  
Texas Department of Agriculture  
Earliest possible date of adoption: February 19, 2006  
For further information, please call: (512) 463-4075

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**TITLE 7. BANKING AND SECURITIES**

**PART 7. STATE SECURITIES BOARD**

**CHAPTER 115. SECURITIES DEALERS AND AGENTS**

**7 TAC §115.2**

The Texas State Securities Board proposes an amendment to §115.2, concerning securities dealers and agents. The proposed amendment would eliminate the requirement for filing an assumed name certificate with an application for registration as a securities dealer.

Micheal Northcutt, Director, Registration Division, and Benette Zivley, Director, Inspections and Compliance Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt and Mr. Zivley also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a streamlined registration process for securities dealers. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-13 and 581-18.

Statutes and codes affected: Articles 581-13 and 581-18.

*§115.2. Application Requirements.*

(a) Securities dealer application requirements. A complete application consists of the following and must be filed in paper form with the Securities Commissioner:

(1) - (3) (No change.)

~~[(4) assumed name certificate, if applicable. The improper use by an applicant of an assumed name containing "incorporated," "corporation," "associates," "limited," or an abbreviation of one of those words, may be grounds for denying registration of the applicant if such designation is thereby misleading;]~~

(4) ~~[(5)]~~ a balance sheet prepared in accordance with generally accepted accounting practices reflecting the financial condition of the dealer as of a date not more than 90 days prior to the date of such filing. The balance sheet should be prepared by independent certified public accountants or independent public accountants, or must instead be attested by the sworn notarized statement of the applicant's principal financial officer. If attested by the principal financial officer of the applicant, such officer shall certify as follows: I am the principal financial officer of (name of dealer). The accompanying balance sheet has been prepared under my direction and control and presents fairly its financial position on the dates indicated to the best of my knowledge, belief, and ability. (Signature and Title).

(5) ~~[(6)]~~ any other information deemed necessary by the Securities Commissioner to determine a dealer's financial responsibility or a dealer's or agent's business repute or qualifications; and

(6) ~~[(7)]~~ the appropriate registration fee(s).

(b) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 9, 2006.

TRD-200600112

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Earliest possible date of adoption: February 19, 2006

For further information, please call: (512) 305-8303



## CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

### 7 TAC §116.2

The Texas State Securities Board proposes an amendment to §116.2, concerning investment advisers and investment adviser representatives. The proposed amendment would eliminate the requirement for filing an assumed name certificate with an application for registration as an investment adviser.

Micheal Northcutt, Director, Registration Division, and Benette Zivley, Director, Inspections and Compliance Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt and Mr. Zivley also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be a streamlined registration process for investment advisers. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-13 and 581-18.

Statutes and codes affected: Articles 581-13 and 581-18.

*§116.2. Application Requirements.*

(a) Investment adviser and investment adviser representative application requirements. A complete application consists of the following and must be filed in paper form with the Securities Commissioner, except in such time as the Investment Adviser Registration Depository System (IARD) becomes available:

(1) - (3) (No change.)

~~[(4) assumed name certificate, if applicable. The improper use by an applicant of an assumed name containing "incorporated," "corporation," "limited," or an abbreviation of one of those words, may be grounds for denying registration of the applicant if such designation is thereby misleading;]~~

(4) ~~[(5)]~~ a balance sheet prepared in accordance with generally accepted accounting practices reflecting the financial condition of the investment adviser as of a date not more than 90 days prior to the date of such filing. The balance sheet should be prepared by independent certified public accountants or independent public accountants, or must instead be attested by the sworn notarized statement of the applicant's principal financial officer. If attested by the principal financial officer of the applicant, such officer shall certify as follows: I am the principal financial officer of (name of investment adviser). The accompanying balance sheet has been prepared under my direction and control and presents fairly its financial position on the dates indicated to the best of my knowledge, belief, and ability. (Signature and Title).

(5) ~~[(6)]~~ disclosure document or Part II of Form ADV;

(6) ~~[(7)]~~ a copy of the investment adviser's standard advisory contract;

(7) ~~[(8)]~~ fee schedule;

(8) ~~[(9)]~~ any other information deemed necessary by the Securities Commissioner to determine an investment adviser's financial responsibility or an investment adviser's or investment adviser representative's business repute or qualification; and

(9) ~~[(40)]~~ the appropriate registration fee(s).



(b) - (f) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 9, 2006.

TRD-200600111

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Earliest possible date of adoption: February 19, 2006

For further information, please call: (512) 305-8303



## TITLE 22. EXAMINING BOARDS

### PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

#### CHAPTER 71. APPLICATIONS AND APPLICANTS

##### 22 TAC §71.3

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §71.3(a), relating to admission requirements for each student admitted to study chiropractic, as required by HB 972, the Board's Sunset legislation.

Section 21 of HB 972, 79th Legislature, Regular Session, amended the chiropractic Act, Texas Occupations Code §201.303, to clarify the educational requirements for chiropractic applicants. This amendment to §71.3 specifies the educational requirements as set forth by the Council on Chiropractic Education in its Standards for Doctor of Chiropractic Programs and Requirements for Institutional Students Status, III. F, p. 20-21 (January 2005).

Sandra Smith, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no additional cost to state or local governments as a result of enforcing or administering this amendment.

Ms. Smith also determined the for each year of the first five-year period the rule is in effect the public benefit will be clearer and more exact standards for students of chiropractic. Ms. Smith has determined that there will be no economic costs to persons who are required to comply with the amendment as proposed. There will be no effect to small or micro businesses.

Comments on the proposed rule may be submitted to Sandra Smith, Executive Director, Texas State Board of Chiropractic Examiners 333 Guadalupe St., Tower III, Suite 825, Austin, TX 78701, (512) 305-6705 fax, no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The amendment is proposed under the Texas Occupations Code, §201.152, relating to rules, and §201.303, relating to educational requirements. Section 201.152 authorizes the board to adopt rules necessary to regulate the practice of chiropractic. Section 201.303 establishes educational requirements for undergraduate study and for the study of chiropractic.

No other statutes, articles, or codes are affected by the proposed rule.

##### §71.3. *Qualifications of Applicants.*

(a) All applicants must comply with the application process and license requirements in the Chiropractic Act, subchapter G of chapter 201 of the Occupations Code.

(b) The board may deny an application for a chiropractic license if it receives information from an administering entity that the applicant has defaulted on a student loan or has breached a student loan repayment contract or scholarship contract by failing to perform his or her service obligation under the contract. The board may rescind a denial under this subsection upon receipt of information from an administering entity that the applicant whose application was denied is now in good standing. For the purposes of this subsection, "good standing" means that the applicant has:

(1) entered into an agreement with the administering entity to:

(A) repay the student loan;

(B) perform the service obligation; or

(C) pay any damages required by the student loan repayment contract or scholarship contract; or

(2) taken other action resulting in the applicant no longer being in default on the loan or in breach of a repayment or scholarship contract.

(c) For each student admitted a Chiropractic College must document and retain evidence in the student's file regarding the basis upon which the student was judged to be qualified for admission, and clearly inform the student at the time of admission that limitations of practice venue and licensure might occur. Students must demonstrate that qualifications for student acceptance and resultant enrollment are appropriate to the program objectives, goals and educational mission of the program or institution. Each student admitted to begin the study of chiropractic on the basis of academic credentials from institutions within the United States must meet the following requirements:

(1) All matriculants must furnish proof of having earned a minimum of 90 semester hour credits of appropriate pre-professional education courses at an institution or institutions accredited by a nationally recognized agency. Included in these credits must be a minimum of 48 semester hour credits in the course areas noted in paragraph (2) of this subsection. In addition, all matriculants must have earned a cumulative grade point average of at least 2.50 on a scale of 4.0 for the courses listed in paragraph (2) of this subsection and for the required 90 semester hours. Quarter hour credits may be converted to equivalent semester hour credits. In situations in which one or more courses have been repeated with equivalent courses, the most recent grade(s) may be used for grade point average computation and the earlier grade(s) may be disregarded.

(2) All Matriculants must present a minimum of 48 semester hours' credit (or the quarter-hour credit equivalents), distributed as follows:

(A) English Language Skills: 6 semester hours;

(B) Psychology: 3 semester hours;

(C) Social Sciences or Humanities: 15 semester hours;

(D) Biological Sciences: 6 semester hours. The Biological Sciences requirements must include pertinent laboratory experiences that cover the range of material presented in the didactic portions of the course(s); and

(E) Chemistry: 12 semester hours. The Chemistry requirement may be met with at least 3 semester hours of general or in-

organic chemistry and at least 6 hours of organic chemistry and/or bio-chemistry coursed with unduplicated content. At least 6 semester hours of the chemistry courses must include pertinent laboratory experiences, which cover the range of material presented in the didactic portions of the courses.

(F) Physics and related studies: 6 semester hours. The physics requirement may be met with either one or more physics courses with unduplicated content (of which one must include a pertinent related laboratory that covers the range of material in the didactic portions of the course), or three (3) semester hours in physics (with laboratory) and three (3) semester hours in either biomechanics, kinesiology, statistics, or exercise physiology.

(3) In each of the six distribution areas, if more than one course is taken to fulfill the requirement, the course content must be unduplicated. In the event an institution's transcript does not combine laboratory and lecture grades for a single course grade, the admitting institution may calculate a weighted average of those grades to establish the grade in that science course.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sandra Smith

Executive Director

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6703



## CHAPTER 73. LICENSES AND RENEWALS

### 22 TAC §73.4

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §73.4(b), relating to Inactive Status, to delete the requirement of a processing fee for inactive licenses. This amendment is a companion to the adopted amendment to §75.79(a), relating to Required Fees and Charges. The companion amendment was adopted in the December 2, 2005, issue of the *Texas Register* (30 TexReg 8093). The Board has decided to no longer assess this fee.

Sandra Smith, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended rule.

Ms. Smith also has determined that for each year of the first five-year period the rule is in effect the public benefit will be reduced fees for inactive licenses. Ms. Smith has determined that there will be no economic costs to persons who are required to comply with the proposed amendment. There will be no effect to small or micro businesses.

Comments on the proposed rule may be submitted to Sandra Smith, Executive Director, Texas State Board of Chiropractic Examiners 333 Guadalupe St., Tower III, Suite 825, Austin, TX 78701, (512) 305-6705 fax, no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The amendment is proposed under Texas Occupation Code §201.152, relating to Rules, and §201.153, relating to Fees.

Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.153 authorizes the Board to set fees by rule in amounts reasonable and necessary to cover the costs of administering the Chiropractic Act.

No other statutes, articles, or codes are affected by the proposed rule.

#### §73.4. Inactive Status.

(a) Each year, on or before a licensee's renewal date, a licensee who is not currently practicing chiropractic in Texas may renew his or her license as provided by §73.2 of this title (relating to Renewal of License) and request, on a form prescribed by the board, that it be placed on inactive status. In order to continue on inactive status and to maintain a valid license, an inactive licensee must renew his or her license and make a new request for inactive status each year.

(b) ~~[A licensee on inactive status is required to pay a processing fee as required by §75.7 of this title if the application for inactive status is submitted on or before the annual expiration date of the license.]~~ If the application is late, the licensee shall be subject to §73.2(d) of this title (relating to Expired License). A licensee on inactive status is not required to complete continuing education as provided in §73.3 of this title (relating to Continuing Education).

(c) To place a license on inactive status at a time other than the time of license renewal, a licensee shall:

(1) return the current renewal certificate to the board office; and

(2) submit a signed, notarized statement stating that the licensee shall not practice chiropractic in Texas while the license is inactive, and the date the license is to be placed on inactive status.

(d) To reactivate a license which has been on inactive status for five years or less, a licensee shall, prior to beginning practice in this state:

(1) apply for active status on a form prescribed by the board;

(2) submit written verification of attendance at and completion of continuing education courses as required by §73.3 of this title for the number of hours that would otherwise have been required for renewal of a license. Approved continuing education earned within the calendar year prior to the licensee applying for reactivation may be applied toward the continuing education requirement; and

(3) pay the Active License Renewal Fee.

(e) A license which has been on inactive status for a period of more than five years may be reactivated only upon successfully passing Part IV of the National Board of Examination and the board's Jurisprudence Examination prior to reactivation.

(f) Prohibition against Practicing Chiropractic in Texas. A licensee while on inactive status shall not practice chiropractic in this state. The practice of chiropractic by a licensee while on inactive status constitutes the practice of chiropractic without a license.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sandra Smith  
Executive Director  
Texas Board of Chiropractic Examiners  
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## CHAPTER 74. CHIROPRACTIC FACILITIES

### 22 TAC §74.2

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §74.2(h), relating to Facility Registration Requirements, to delete the exemption for chiropractic colleges. The Board is proposing this amendment in order to regulate the practice of chiropractic by students at chiropractic colleges.

Sandra Smith, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended rule.

Ms. Smith also has determined that for each year of the first five-year period the rule is in effect the public benefit will be greater enforcement. Ms. Smith has determined that compliance with this amendment will cost each chiropractic college \$80.00 per year. There will be no effect to small or micro businesses.

Comments on the proposed rule may be submitted to Sandra Smith, Executive Director, Texas State Board of Chiropractic Examiners 333 Guadalupe St., Tower III, Suite 825, Austin, TX 78701, (512) 305-6705 fax, no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The amendment is proposed under Texas Occupation Code §§201.152, relating to Rules; 201.302, relating to License Required; and 201.312, relating to Registration of Facilities. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.302 provides that a person may not practice chiropractic without a license issued by the Board. Section 201.312 authorizes the Board to adopt requirements for registering chiropractic facilities as necessary to protect the public health, safety, and welfare.

No other statutes, articles, or codes are affected by the proposed rule.

#### §74.2. Facility Registration Requirements.

(a) A facility shall not provide chiropractic services without first being registered by the board.

(b) An applicant for a facility registration shall submit to the board an application as prescribed by the board, along with the facility registration fee as provided in §75.7 of this title (relating to fees). The application must be signed by the owner, if a sole proprietorship, or by an authorized representative, if a partnership or corporation.

(c) The following information shall be included in the application and upon renewal:

(1) the legal name of the facility and street address, and telephone and facsimile numbers for the facility;

(2) the type of legal entity (sole proprietorship, partnership, corporation);

(3) the name, address, and percentage of ownership of each person with a 10% or greater ownership interest in the facility; if a person is an individual, include the person's social security number,

driver's license number, date of birth, and if a licensee, his or her license number;

(4) the name and license number of each doctor licensed by the board who is employed or otherwise engaged to provide chiropractic services at the facility; and

(5) any other information requested by the board that it deems necessary for processing the application or for other regulatory purposes.

(d) Social security numbers are collected for purposes of child support collection and student loan enforcement.

(e) A facility owner must be 21 years of age or older.

(f) Facilities that share office space or staff but otherwise maintain separate business identities, including billing, accounting and other functions, shall be treated as separate facilities and a registration and registration fee will be required for each facility.

(g) No registration will be issued on an incomplete submission. Application or renewal packages that are submitted without all of the required documents or fees will be deemed incomplete and returned to the applicant.

(h) This chapter does not apply to hospitals or public health clinics registered with the Department of State Health Services [Texas Department of Health] or another state agency [; or a chiropractic facility owned and operated by a Texas college of chiropractic as part of its chiropractic internship program].

(i) The board may deny an application for a facility registration by a sole proprietor or partnership if it receives information from an administering entity that the applicant has defaulted on a student loan or has breached a student loan repayment contract or scholarship contract by failing to perform his or her service obligation under the contract. The board may rescind a denial under this subsection upon receipt of information from an administering entity that the applicant whose application was denied is now in good standing, as provided in subsection (b) of §71.3 (relating to Qualifications of Applicants) of this title.

(j) At least 30 days prior to the expiration of a facility's certificate of registration, the Board shall send written notice of the impending expiration to an owner of a facility and to each chiropractor practicing in said facility. Failure of a facility owner and/or chiropractors practicing in said facility to receive such written notice shall not effect the renewal date of said certificate of registration.

(k) A licensee who practices chiropractic in a facility that the licensee knows is not registered under this chapter is subject to disciplinary action as provided in §75.10 of this title (relating to Disciplinary Guidelines).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sandra Smith

Executive Director

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6703



### 22 TAC §74.3

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §74.3, relating to the annual renewal of chiropractic facilities. The proposed amendments are intended to improve the oversight of chiropractic facilities.

The proposed amendment to subsection (a) would require that, when the owner of a facility is not a licensed chiropractor, the facility must submit each year information on the hours of operation of each clinic, the names and working hours for each licensed chiropractor, and the names and working hours for each personnel at the clinic.

The proposed new subsection (e) will allow the Board to close a facility's files if the facility's certificate of registration has been expired for more than a year. This will allow the Board to better oversee the operating facilities and will relieve the Board from having to send renewal notices to closed facilities.

Sandra Smith, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the amended rule.

Ms. Smith has also determined that there will be a de minimis cost to persons who are required to comply with the proposed amendments for each of the first five years that the additional reporting required under the proposed amendment is in effect. For each of the first five years that additional reporting required under the proposed amendment is in effect, the public benefit will be an increased oversight of chiropractic facilities. There will be no effect to small or micro businesses.

Comments on the proposed amendment may be submitted to Sandra Smith, Executive Director, Texas State Board of Chiropractic Examiners 333 Guadalupe St., Tower III, Suite 825, Austin, TX 78701, facsimile (512) 305-6705, by the close of business either 30 days from the date that this proposed amendment is published in the *Texas Register*.

The amendment is proposed under Texas Occupation Code §§201.152, relating to rules; 201.312, relating to registration of facilities; 201.351, relating to annual registration; and 201.1555, relating to Fraud. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.1555 requires that the Board adopt rules to prevent fraud in the practice of chiropractic, including rules relating to records required to be maintained. Section 201.312 authorizes the Board to adopt requirements for registering chiropractic facilities as necessary to protect the public health, safety, and welfare. Section 201.351 authorizes the Board to prohibit a chiropractor from practicing chiropractic in this state unless the chiropractor annually registers with the board not later than January 1 of each year.

No other statutes, articles, or codes are affected by the proposed rule.

#### §74.3. *Annual Renewal.*

(a) On or before the designated renewal date each year, a registered facility shall renew its certificate of registration, by submitting:

- (1) a facility renewal form as prescribed by the board;
- (2) complete information as required on the form, including changes in information since the original application or last renewal; ~~and~~

(3) for a facility that is not owned by a licensee, the following additional information shall be submitted:

(A) the hours of operation for each clinic;

(B) the names and working hours at each clinic for each licensed chiropractor; and

(C) the names and working hours at each clinic for all other personnel; and

(4) ~~[(3)]~~ the facility registration fee as provided in §75.7 of this title (relating to Fees and Charges for Public Information).

(b) A facility registration expires on:

(1) the first day of the owner's birth month if solely owned by a licensed chiropractor;

(2) the first day of the majority owner's birth month, if owned by more than one licensed chiropractor. If a facility is owned equally by more than one licensed chiropractor, the facility registration expires on the first day of the birth month of the owner listed first on the facility application; or

(3) September 1 if owned by a corporation or someone other than a licensed chiropractor.

(c) If a facility's certificate of registration has expired, the facility may renew its registration by submitting to the board all of the items required by subsection (a) of this section and a late fee of \$50.00; if the facility's certificate of registration has expired for more than 90 days, a late fee of \$100.00 must be submitted.

(d) A facility owner that fails to renew the facility's registration on or before the expiration date may also be subject to an administrative penalty and other disciplinary sanctions as provided in §74.9 of this title (relating to Disciplinary Action).

(e) If a facility's certificate of registration has been expired for more than one year, the Board may close the facility's file.

(f) ~~[(e)]~~ A facility shall not provide chiropractic services without a current certificate of registration.

(g) ~~[(f)]~~ The board shall not renew a facility registration of sole proprietor or partnership if the sole proprietor or a partner is in default of a loan guaranteed by the Texas Guaranteed Student Loan Corporation (TGSLC) or a repayment agreement with the corporation except as provided by §73.2(c) of this title (relating to Renewal of License). The board may refuse to renew a facility registration of a sole proprietor or partnership if it receives information from an administering entity that the registrant, including a partner, has defaulted on a student loan other than a TGSLC loan, or breached a repayment contract relating to a student loan other than a TGSLC loan or a scholarship contract by failing to perform his or her service obligation under the contract. The board may rescind a denial of renewal under this subsection upon receipt of information from an administering entity that the registrant whose renewal was denied is now in good standing, as provided in §71.3(b) of this title (relating to Qualifications of Applicants). Upon notice that a registrant is again in default or breach of any loan or agreement relating to a student loan or scholarship agreement, the board may suspend the registration or take other disciplinary action as provided in §80.2 of this title (relating to Default on Student Loans and Scholarship Agreements).

(h) ~~[(g)]~~ Opportunity for hearing:

(1) the board shall notify a registrant, in writing, of the non-renewal of a registration under subsection (g) ~~[(f)]~~ of this section and of the opportunity for a hearing under paragraph (2) of this subsection prior to or at the time the annual renewal application is sent.

(2) upon written request for a hearing by a registrant, the board shall set the matter for hearing before the State Office of Admin-

istrative Hearings in accordance with §75.9(d) of this title (relating to Complaint Procedures). A registrant shall file a request for a hearing with the board within 30 days from the date of receipt of the notice provided in paragraph (1) of this subsection.

(i) ~~[(h)]~~ A registration which is not renewed under subsection (g) ~~[(f)]~~ of this section is considered expired.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 9, 2006.

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Sandra Smith

Executive Director

Texas Board of Chiropractic Examiners

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For further information, please call: (512) 305-6703



## CHAPTER 75. RULES OF PRACTICE

### 22 TAC §75.15

The Texas Board of Chiropractic Examiners (Board) proposes new §75.15, relating to peer review committees, as required by HB 972, and as necessary to clarify the rules for the investigation of complaints.

This new rule will not alter the Board's practice in the exercise of its investigation discretion. The Board will, however, publish its schedule of investigative and complaint priorities on its web site ([www.tbce.state.tx.us](http://www.tbce.state.tx.us)).

Sandra Smith, Executive Director, has determined that for the first five-year period the new rule is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the new section.

Ms. Smith has also determined that for each year of the first five-year period the rule is in effect the public benefit will be a greater clarity of the Board's procedures. Ms. Smith has determined that there will be no economic costs to persons who are required to comply with the new section. There will be no effect to small or micro businesses.

Comments on the proposed new rule may be submitted to Sandra Smith, Executive Director, Texas State Board of Chiropractic Examiners 333 Guadalupe St., Tower III, Suite 825, Austin, TX 78701, (512) 305-6705 fax, no later than 30 days from the date that the proposed rule is published in the *Texas Register*.

The new rule is proposed under the Texas Occupations Code, §201.251, relating to peer review committees. Section 201.251 authorizes the Board to appoint local chiropractic peer review committees from a list of nominees submitted by the local chiropractic association to conduct peer review procedures. Additionally, §201.252 (c) provides that the board shall establish requirements for peer review training programs that do not discriminate against any chiropractor.

No other statutes, articles, or codes are affected by the proposed rule.

§75.15. *Peer Review Committee.*

(a) When investigating a complaint, the board may consider as a mitigating factor whether a licensee has cooperated with, or established, an effective local peer review process.

(b) A chiropractic peer review process is part of an outcome-based, continuous quality improvement process that involves:

(1) the setting and periodic re-evaluation of standards for quality by which a chiropractic operation will be evaluated;

(2) the collection of data necessary to identify when those standards are not being met and data necessary to evaluate the reason(s) the deficiency occurred;

(3) an objective review of the data by an appropriate peer review committee to make recommendations for quality improvement; and

(4) an appropriate feedback mechanism to ensure that the process is operating in a manner that continually improves the quality of care provided to patients.

(c) In appointing members to peer review committees, the board shall ensure that each member meets the following requirements:

(1) a clean disciplinary record; and

(2) an acceptable record regarding utilization review performed in accordance with the Texas Insurance Code, Article 21.58A.

(d) Each peer review committee member shall be appointed by the board and shall serve for a term of three years. The board may choose to reappoint peer review committee members.

(e) Peer review committee members shall fulfill the following duties:

(1) review standards of care and billing complaints;

(2) review records and evidence collected by agency staff as part of an investigation;

(3) report to the board their findings regarding a complaint, including the applicable standard of care governing the chiropractic treatment or services provided by the chiropractor, whether the standard of care was met, and the clinical basis for the committee's finding;

(4) evaluate periodically how well peer review is working; and

(5) further cooperate with the board and the enforcement committee in the investigation of complaints as required, including attending an informal conference or testifying at a contested case hearing.

(f) The board shall appoint a six-member Executive Peer Review Committee to oversee and direct the activities of the local peer review committees. The Executive Peer Review Committee shall elect a presiding officer from its members.

(1) The Executive Peer Review Committee shall conduct hearings relating to disputes referred by a local peer review committee and shall make its recommendations based solely on evidence presented in the hearings.

(2) The Executive Peer Review Committee shall submit to the board an annual report on the effectiveness of peer review and opportunities for improving peer review.

(g) The board shall provide all peer review committee members with training in the investigation of complaints in accordance with the Chiropractic Act and the board's rules.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Sandra Smith

Executive Director

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## PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

### CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES

#### SUBCHAPTER A. LICENSING

##### 22 TAC §851.30

The Texas Board of Professional Geoscientists (TBPG) proposes a new Chapter 851, Subchapter A, §851.30, concerning the registration of firms. The proposed rule outlines procedures and fees required for firms to be registered to practice geoscience in the state. The rule would allow a firm that employs a full-time professional geoscientist, P.G., to be recognized as a registered firm eligible to perform geoscientific activities before the public in Texas. Registered firms will be responsible for any licensing and renewal fees and procedures required as per the proposed rule.

Michael D. Hess, Executive Director of the TBPG, has determined that adoption of this rule will have no fiscal implications for state and local government as a result of enforcement or administration of this section.

Mr. Hess has also determined that adoption of this rule should increase not only registered firm participation in geoscientific business opportunities, but also licensed individuals who may find employment with a registered firm. Registering firms will also make it difficult for unregistered firms to practice geoscience before the public and will make it easier for the TBPG to enforce such violations. However, there will be an added financial burden to sole-proprietors who will have to pay the registration fee on top of their license renewal fee. There may need to be more clarification about the definition of sole-proprietorships and the Board welcomes all comments on the subject. There will be no economic impact on small or micro-businesses outside the jurisdiction of this rule.

Comments on the proposed rule may be submitted in writing to Michael D. Hess, Executive Director, P.O. Box 13225, Austin, Texas 78701, (512) 936-4401. Comments may also be submitted electronically to [mhess@tbpg.state.tx.us](mailto:mhess@tbpg.state.tx.us) or faxed to (512) 936-4409. All comments must be received within 30 days after publication of this rule in the *Texas Register*. All requests for a public hearing on the proposed section submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The rule is proposed under the Texas Occupations Code, Chapter 1002, §1002.351, which authorizes the Board to establish conditions and fees for the registration of firms.

The proposed rule implements the Texas Occupations Code, Chapter 1002, §1002.351.

##### §851.30. Firm Registration.

(a) The Texas Board of Professional Geoscientists shall receive, evaluate, and process all applications for a certificate of registration issued under the authority of the Texas Geoscience Practice Act (Act). Applications for the certificate of registration shall be accepted from all firms offering to engage or engaging in the practice of professional geoscience for the public in Texas. For the purposes of this section, the term *firm* includes corporations, sole-proprietorships, partnerships and/or joint stock associations. For the purposes of this section, the term *public* includes but is not limited to political subdivisions of the state, business entities, and individuals. The Board has the authority under the Act to issue an annual certificate of registration to applicants that, subsequent to review and evaluation, are found to have met all requirements of the Act and Board rules. The Board has the authority under the Act to deny a certificate of registration to any applicant found not to have met all requirements of the Act and Board rules. This section does not apply to an engineering firm that performs service or work that is both engineering and geoscience.

(b) The Board may issue a certificate of registration only to applicant firms that meet the requirements set forth in §1002.351(a)(1) and (2) of the Act and this section.

(c) The authorized official of the firm shall complete the form furnished by the Board which includes but is not limited to the following information listed in paragraphs (1) - (6) of this subsection:

(1) the name, address, and communication number of the firm offering to engage or engaging in the practice of professional geoscience for the public in Texas;

(2) the name, position, address, and communication numbers of each officer or director;

(3) the name, address and current active Texas professional geoscientist license number of each regular, full-time geoscience employee performing geoscientific work for the public in Texas on behalf of the firm;

(4) the name, location, and communication numbers of each subsidiary or branch office offering to engage or engaging in the practice of professional geoscience for the public in Texas, if any;

(5) a signed statement attesting to the correctness and completeness of the application; and

(6) an application fee as established by the Board.

(d) For a firm that offers or performs services only on a part-time basis, the professional geoscientist who has physical presence, is a full-time employee of the firm, and offers or performs the geoscientific work or who directly supervises the geoscientific work while the firm is in operation shall satisfy the requirement of the regular, full-time employee as set forth in §851.152 of this chapter.

(e) The application fee will not be refunded.

(f) The certificate of registration shall be valid for a period of one year from the date it is issued. A renewed or reissued license is valid for a period of one year from the expiration date of the license being renewed. At least 45 - 60 days in advance of the date of the expiration, the Board shall notify each firm holding a certificate of registration of the date of the expiration and the amount of the fee that shall be required for its renewal for one year. The renewal notice shall

be mailed to the last address provided by the firm to the Board. The certificate of registration may be renewed by completing the renewal application and paying the annual registration renewal fee set by the Board. It is the sole responsibility of the firm to pay the required renewal fee prior to the expiration date, regardless of whether the renewal notice is received.

(g) A certificate of registration which has been expired for less than one year may be renewed by completing the renewal statement sent by the Board and payment of a \$50 late renewal fee. When renewing an expired certificate of registration, the authorized official of the firm shall submit a written statement of whether geoscientific services were offered, pending, or performed for the public in Texas during the time the certificate of registration was expired.

(h) If a certificate of registration has been expired for more than one year, the firm must re-apply for certification under the laws and rules in effect at the time of the new application and shall be issued a new certificate of registration serial number if the new application is approved.

(i) The renewal fee will not be refunded.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 6, 2006.

TRD-200600096

Frank Knapp

Assistant Attorney General

Texas Board of Professional Geoscientists

Earliest possible date of adoption: February 19, 2006

For further information, please call: (512) 936-4402



## 22 TAC §851.80

The Texas Board of Professional Geoscientists proposes amendments to Chapter 851, §851.80, concerning fees. The proposed amendments establish a \$75 firm registration fee for firms or corporations wanting to practice geoscience before the public and a \$150 annual renewal fee for said firms who want to maintain their registration. Chapter 1002, §1002.351 of the Texas Occupations Code grants this Board authority to adopt rules relating to the public practice of geoscience by a firm or corporation and §1002.152 grants the Board the authority to set reasonable and necessary fees to be charged to applicants and license holders, including fees for application and renewal.

Michael D. Hess, Executive Director of the Texas Board of Professional Geoscientists, has determined that for the first five years that the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcement and administration of the amended section.

Mr. Hess has also determined that for each year of the first five years the amended section is in effect, the State of Texas can expect public benefit as a result of enforcement and enhanced practice of geoscience by firms or corporations who will need to be registered with the Board. A small economic cost can be expected to those firms or corporations who will need to be registered but there will not be an effect on small or micro businesses outside the geoscience field. There will be no economic cost to individuals.

Comments on the proposed fees may be submitted in writing to Michael D. Hess, Executive Director, P.O. Box 13225, Austin, Texas 78701, (512) 936-4401. Comments may also be submitted electronically to [mhess@tbpg.state.tx.us](mailto:mhess@tbpg.state.tx.us) or faxed to (512) 936-4409. All comments must be received within 30 days after publication of the amendments in the *Texas Register*. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposed amendments to the section has been published in the *Texas Register*.

The amendments are proposed under the Texas Occupations Code, Chapter 1002, §1002.351 and §1002.152 which authorizes the Board to adopt and enforce rules necessary for the registration of firms and corporations and allows the Board to set appropriate fees.

The proposed amendments implement the Texas Occupations Code, Chapter 1002, §1002.351 and §1002.152.

§851.80. *Fees.*

(a) - (i) (No change.)

(j) Firm Registration--\$75

(k) Firm Registration Renewal fee--\$150

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 3, 2006.

TRD-200600024

Frank Knapp

Assistant Attorney General

Texas Board of Professional Geoscientists

Earliest possible date of adoption: February 19, 2006

For further information, please call: (512) 936-4402



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

#### CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

##### SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

##### DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

### 28 TAC §5.4606

The Commissioner of Insurance proposes new §5.4606, concerning the temporary appointment of qualified inspectors to conduct windstorm inspections in Jefferson and Chambers counties pursuant to Insurance Code Article 21.49 §6A. Temporary appointees will be authorized to perform inspections of residential structures that may be considered insurable property for windstorm and hail insurance, but will be limited to re-roof inspections of residential structures during the construction process. As a result of the destruction caused by Hurricane

Rita along the Texas coast, certain counties, and in particular Jefferson and Chambers counties, are facing massive rebuilding and repair of residential and commercial structures. In the Beaumont area alone, approximately 90% of the residential structures are damaged, and the residents are suffering delays in repair of these structures because of the overwhelming demand for windstorm inspections and the lack of qualified inspectors to meet this demand. Inspectors employed by the department are receiving over 100 inspection applications per day. The department has temporarily reassigned its inspectors from other areas on the coast, including Corpus Christi, Angleton, and Bay City, to assist in meeting this demand, and the department's current appointees who perform inspections are responding primarily to the requests for inspections of commercial buildings. As a result, there are long delays for inspections of the vast majority of the residential structures in Jefferson and Chambers counties; these delays continue to adversely impact the ability of residents to rebuild and repair their damaged homes. The department has determined that this lack of availability of willing and qualified inspectors necessitates this proposal to enable the Commissioner to appoint persons with the experience and training that the department has determined is sufficient for qualified inspectors on a temporary basis to respond to residents in the two counties most affected and most in need. The proposed new rule specifies the experience and training of persons eligible to apply for a temporary appointment and outlines the requirements, financial interest prohibitions, and application process for a temporary appointment. The issuance of a temporary appointment to a qualified inspector will only authorize re-roof inspections of residential property in Jefferson and/or Chambers counties; such re-roof inspections must be conducted during the construction process and may not be conducted after completion of the re-roofing process. The proposed expiration date for a temporary appointment is December 31, 2006, unless extended by the department based on demonstrated need in Jefferson or Chambers counties. The temporary appointees will be subject to the provisions of the department's current rule §5.4604 relating to the appointment of engineers as qualified inspectors, including oversight by the department. The temporary appointees will also be subject to the emergency cease and desist provisions of the Insurance Code as provided in proposed subsection (m). This is necessary to ensure that improper inspections are halted as quickly as possible to prevent approval of faulty or inadequate re-roofing of residential structures, which could result in certification of structures that do not meet windstorm building code requirements and also additional harm to the damaged areas in Jefferson and Chambers counties.

The department will consider the adoption of proposed new §5.4606 in a public hearing under Docket Number 2634, scheduled for 10:30 o'clock, a.m. on February 15, 2006, in Room 102 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

Alexis Dick, Deputy Commissioner for the Inspections Division, has determined that, for each year of the first five years the proposed new section is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the section. Ms. Dick has also determined that there will be no measurable effect on local employment or the local economy.

Ms. Dick has further determined that for each year of the first five years the proposed new section is in effect, the public benefit anticipated as a result of administering and enforcing the section will be to ensure that qualified inspectors are available to

respond to residents in hurricane damaged areas most affected and most in need of re-roofing during the period of rebuilding, namely Jefferson and Chambers counties. The department expects that these temporary appointments will result in the relatively prompt availability of persons who are willing and qualified to perform windstorm re-roof inspections on structures to be considered insurable property for windstorm and hail insurance. Texans benefit from a strong and prompt recovery from devastating natural events like Hurricane Rita. The department anticipates that the supply and demand for windstorm inspections in damaged areas will determine the market price of needed inspections; any consumer complaints or other information, however, concerning abusive pricing practices will be carefully reviewed and appropriate action will be taken if necessary. There are no persons who are required to comply with the proposed new section. The anticipated costs to persons who choose to apply for a temporary appointment will be the time to complete the application and obtain the required documents to submit with the application. It is difficult to estimate an exact cost for this time as it is uncertain as to which persons who are eligible will actually participate in this voluntary temporary appointment process. However, eligible persons who are interested in applying for a temporary inspector appointment will be able to estimate their individual costs. There are no application or other fees required under the proposed new section. The department expects no differential impact between small, large, and micro-businesses that decide to participate in this temporary appointment process. The cost per hour of labor for the application process should not vary between small, large, and micro-businesses of the same type. Further, it is neither legal nor feasible to exempt small or micro-businesses or to waive compliance considering the purpose of the statute, which requires windstorm inspections to be performed by a qualified inspector who must be approved and appointed or employed by the department to perform building inspections.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on February 20, 2006, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to Alexis Dick, Deputy Commissioner, Inspections Division, Mail Code 103-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The new section is proposed pursuant to the Insurance Code Article 21.49 §6A and §36.001. Article 21.49 §6A provides that a windstorm inspection may only be performed by a qualified inspector who must be approved and appointed or employed by the department to perform building inspections. Section 6A also provides that a qualified inspector includes a person determined by the department to be qualified to perform building inspections because of training or experience and an inspector who is certified by the International Code Council, the Building Officials and Code Administrators International, Inc., the International Conference of Building Officials, or the Southern Building Code Congress International, Inc. who has certifications as a buildings inspector and coastal construction inspector and who also complies with other requirements specified by rule by the commissioner. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statute is affected by this proposal: Insurance Code Article 21.49



§5.4606. Requirements for Temporary Appointment of Qualified Inspectors.

(a) The purpose of this section is to specify qualifications, requirements, and procedures pursuant to the Insurance Code Article 21.49 §6A(d) for the appointment for a temporary period of persons to perform windstorm re-roof inspections of residential structures in Jefferson and/or Chambers counties of Texas. Persons appointed under this section must meet the qualifications for appointment under this section and shall perform inspections in accordance with the provisions of this section, §§5.4001 - 5.4010 of this title relating to the Texas Windstorm Insurance Association plan of operation, §§5.4601 - 5.4605 of this title relating to inspections for windstorm and hail insurance, and the Insurance Code Article 21.49 §6A. The following persons are eligible to apply for a Temporary Appointment as a Qualified Inspector:

(1) A person who is certified as a coastal construction inspector by the International Code Council and who has at least two years of construction, design or inspection experience on buildings or structures located in high wind areas; this may include a person employed full-time by a municipality of this state who meets the qualifications as stated in this paragraph; or

(2) A Texas registered architect with construction, design or inspection experience on buildings or structures located in high wind areas; or

(3) Any person with experience, education, or training in programs at an accredited university which shall include at a minimum successful completion of at least two years of technical or university training in the field of civil or architectural engineering, the field of architecture, or the field of construction technology or construction science and at least two years of construction, design or inspection experience on buildings or structures located in high wind areas.

(b) For the purposes of this section, the following words and terms shall have the following meanings:

(1) Commissioner--Commissioner of Insurance of the State of Texas.

(2) Department--Texas Department of Insurance.

(3) Person--An individual and includes a resident or non-resident of this state.

(4) Re-roof--The process of recovering or replacing an existing roof covering and includes the following terms:

(A) Roof covering--The covering applied to a roof deck for weather resistance, fire classification or appearance.

(B) Roof deck--The flat or sloped surface not including its supporting members or vertical supports.

(C) Roof recover--The process of installing an additional roof covering over a prepared roof covering without removing the existing roof covering.

(D) Roof replacement--The process of removing the existing roof covering, repairing any damaged substrate and installing a new roof covering.

(5) Temporary appointee--A person who has been issued a Temporary Appointment as a Qualified Inspector under this section.

(c) A person applying for a temporary appointment under this section must complete and file an application for Temporary Appointment as a Qualified Inspector on a form prepared, maintained, and obtainable from the department.

(d) Persons applying under the requirements of paragraph (1) of subsection (a) of this section shall also affirm to the Commissioner

through a sworn statement the current, active, and good-standing status of their certification and/or shall also provide a Certification of Employment affidavit from the municipality as applicable.

(e) Persons applying under the requirements of paragraph (2) of subsection (a) of this section shall also affirm to the Commissioner through a sworn statement the current, active, and good-standing status of the architect's registration through the Texas Board of Architectural Examiners.

(f) Persons applying under the requirements of paragraph (3) of subsection (a) of this section shall also provide a certified copy of a completed degree, if any, certificate, or transcript.

(g) A temporary appointee shall not have a financial interest either directly or indirectly in or be employed by a business that is financially interested either directly or indirectly in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of any building, nor have current employment or accept compensation or accept other employment or compensation during the period of appointment which could reasonably be expected to impair the temporary appointee's independence of judgment in the performance of inspections pursuant to this section.

(h) A temporary appointee shall comply with and utilize all windstorm inspection forms required by §5.4604 of this title relating to appointment of engineers as qualified inspectors, with such forms modified to substitute "qualified inspector" for "engineer" as applicable.

(i) Except as otherwise provided in this section, a temporary appointee shall be subject to all provisions of §5.4604 of this title including oversight by the department as specified in subsection (h) of §5.4604. If there is a conflict between the provisions of this section and the provisions of §5.4604 of this title, this section shall control.

(j) A temporary appointee is prohibited from delegating the duties under this section to any other person. The delegation/assistance provision of subsection (g)(5) of §5.4604 of this title shall not apply to a temporary appointee.

(k) A temporary appointee is only authorized to perform in Jefferson and Chambers counties re-roof inspections of residential structures during the construction process on risks that could be considered insurable property for windstorm and hail insurance. No other types of inspections by temporary appointees will be considered valid for purposes of the Insurance Code Article 21.49.

(l) A Temporary Appointment as a Qualified Inspector issued under this section shall be valid until December 31, 2006, unless extended by the department based on demonstrated need in Jefferson or Chambers counties.

(m) In addition to any other remedy available under Insurance Code Article 21.49 §6A, and Chapters 82 and 84, and §5.4604 of this title relating to appointment of engineers as qualified inspectors, the department may issue an emergency cease and desist order pursuant to Insurance Code Chapter 83 to any person who violates any provision of this subchapter or any other rule or statute relating to inspections of structures to be considered insurable property for windstorm and hail insurance.

(n) If a court of competent jurisdiction holds that any provision of this section is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of this section shall remain in effect.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 9, 2006.

TRD-200600119

Brenda Caldwell

Alternate Certifying Official

Texas Department of Insurance

Earliest possible date of adoption: February 19, 2006

For further information, please call: (512) 463-6327



# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## **TITLE 22. EXAMINING BOARDS**

### **PART 9. TEXAS MEDICAL BOARD**

#### **CHAPTER 172. TEMPORARY AND LIMITED LICENSES**

##### **SUBCHAPTER C. LIMITED LICENSES**

###### **22 TAC §172.13**

The Texas Medical Board withdraws proposed new §172.13 which appeared in the November 4, 2005, issue of the *Texas Register* (30 TexReg 7128).

Filed with the Office of the Secretary of State on January 5, 2006.

TRD-200600073

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Effective date: January 5, 2006

For further information, please call: (512) 305-7016

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# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 10. COMMUNITY DEVELOPMENT

### PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

#### CHAPTER 257. EXECUTIVE COMMITTEE FOR OFFICE OF RURAL COMMUNITY AFFAIRS

The Office of Rural Community Affairs (Office) adopts the repeal of §§257.1, 257.3 - 257.9, 257.61 - 257.73, 257.501, 257.503, 257.505, 257.507, 257.509, 257.511, 257.513, 257.515, 257.517, 257.519, 257.521, 257.523, 257.525, and 257.527 and adopts amendments to §§257.21 - 257.30, 257.101, 257.103, 257.105, 257.107, 257.109, 257.201, 257.203, 257.205, 257.207, 257.209, 257.211, 257.213, 257.215, 257.217, 257.301, 257.303, 257.305, 257.307, 257.309, 257.311, 257.313, 257.315, 257.317, 257.319, 257.321, 257.325, 257.327, 257.401 - 257.411, 257.701, 257.703, 257.801, and 257.807 without changes to the proposed text as published in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6880).

The Office of Rural Community Affairs (Office) deletes §§257.1, 257.3 - 257.9 of the Texas Administrative Code to eliminate the duplication of rural health program rules contained in Subchapter D, §§257.101, 257.103, 257.105, 257.107, and 257.109 relating to the operation, organization and respective responsibilities of the Executive Committee and the Executive Director in the administration of the rural health program.

The adopted amendments delete all references to the Center for Rural Health Initiatives and substitute Office of Rural Community Affairs. The amendments will also eliminate the rules addressing the Community Scholarship and Rural Emergency Medical Scholarship Incentive Programs (REMSIP). The Community Scholarship Program was eliminated when Congress failed to continue to fund the program.

Subchapter A is revised to eliminate the duplication of rural health program rules relating to the operation, organization and respective responsibilities of the Executive Committee and the Executive Director in the administration of the rural health program. Subchapter C is revised to reflect the elimination of the Community Scholarship program when the U.S. Congress failed to continue to fund the program. Subchapter H was revised when the REMSIP program was eliminated because of the high rate of default by grantees. Subchapter B, Texas Outstanding Rural Scholar Recognition Program, Subchapter D, Texas Rural Physician Assistant Loan Reimbursement Program, Subchapter E, Texas Health Service Corps Program, Subchapter F, Medically Underserved Community-State Matching Incentive

Program, Subchapter G, Permanent Fund for Rural Health Facility Capital Improvement, Subchapter J, Designation of a Hospital as a Rural Hospital, and Subchapter K, Rural Communities Health Care Investment Program were primarily revised to reflect that the programs are being administered by the Office of Rural Community Affairs and not the Center for Rural Health.

Subchapter B, the Texas Outstanding Rural Scholar Recognition Program §§257.22 - 257.30, Subchapter D, the Texas Rural Physician Assistant Loan Reimbursement Program, §§257.101, 257.103, 257.105, 257.107 and 257.109, Subchapter E, the Texas Health Service Corps Program, §§257.201, 257.203, 257.205, 257.207, 257.209, 257.211, 257.213, 257.215, and 257.217, Subchapter F, the Medically Underserved Community-State Matching Incentive Program, §§257.301, 257.303, 257.305, 257.307, 257.309, 257.311, 257.313, 257.315, 257.317, 257.319, 257.321, 257.323, 257.325, and 257.327, Subchapter G, Permanent Fund for Rural Health Facility Capital Improvement, §§257.401 - 257.411, Subchapter J, §§257.701, 257.703, 257.705, and 257.707 and Subchapter K, §257.801 and §257.807 have been revised to reflect that the rural health program is being administered by the Office of Rural Community Affairs and no longer being administered by the Center for Rural Health.

Also deleted is Subchapter C, §§257.61 - 257.73 which addresses the rural health Community Scholarship program. The Community Scholarship program was eliminated when the U.S. Congress failed to continue to fund the program.

Also deleted is Subchapter H, the Rural Emergency Medical Scholarship Incentive Program (REMSIP). The REMSIP program, which was a pilot program, was a rural health program which became inactive because of a high rate of default by the grantees. The program has been replaced with other pilot programs including the EMS Education Program, the Critical Access Hospital/EMS and the Rural EMS Enhancement Program.

The repeals will eliminate duplicate procedures and processes provided for in agency rules Title 10, Part 6, Chapters 255, 256 and 257 of the Texas Administrative Code.

The revision adopts the definition of Rural Health Professional Shortage Area (HPSA) as defined by the U.S. Department of Health and Human Services and Medically Underserved Area (MUA) as defined in this agency's enabling legislation.

No comments were received by the Office in response to the publication of the proposed rules.

#### SUBCHAPTER A. POLICIES AND PROCEDURES

10 TAC §§257.1, 257.3 - 257.9

The repeals are adopted under the authority of Chapter 487 §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this chapter.

There are no other codes, articles or statutes affected by the repeals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 4, 2006.

TRD-200600043

Charles S. Stone

Executive Director

Office of Rural Community Affairs

Effective date: January 24, 2006

Proposal publication date: October 21, 2005

For further information, please call: (512) 936-6710



## SUBCHAPTER B. TEXAS OUTSTANDING RURAL SCHOLAR RECOGNITION PROGRAM

### 10 TAC §§257.21 - 257.30

The amendments are adopted under the authority of Chapter 487 §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this chapter.

There are no other codes, articles or statutes affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200600046

Charles S. Stone

Executive Director

Office of Rural Community Affairs

Effective date: January 24, 2006

Proposal publication date: October 21, 2005

For further information, please call: (512) 936-6710



## SUBCHAPTER C. COMMUNITY SCHOLARSHIP PROGRAM

### 10 TAC §§257.61 - 257.73

The repeals are adopted under the authority of Chapter 487 §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this chapter.

There are no other codes, articles or statutes affected by the repeals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200600047

Charles S. Stone

Executive Director

Office of Rural Community Affairs

Effective date: January 24, 2006

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For further information, please call: (512) 936-6710



## SUBCHAPTER D. TEXAS RURAL PHYSICIAN ASSISTANT LOAN REIMBURSEMENT PROGRAM

### 10 TAC §§257.101, 257.103, 257.105, 257.107, 257.109

The amendments are adopted under the authority of Chapter 487 §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this chapter.

There are no other codes, articles or statutes affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 4, 2006.

TRD-200600048

Charles S. Stone

Executive Director

Office of Rural Community Affairs

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Proposal publication date: October 21, 2005

For further information, please call: (512) 936-6710



## SUBCHAPTER E. TEXAS HEALTH SERVICE CORPS PROGRAM

### 10 TAC §§257.201, 257.203, 257.205, 257.207, 257.209, 257.211, 257.213, 257.215, 257.217

The amendments are adopted under the authority of Chapter 487 §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this chapter.

There are no other codes, articles or statutes affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 4, 2006.

TRD-200600049

Charles S. Stone  
Executive Director  
Office of Rural Community Affairs  
Effective date: January 24, 2006  
Proposal publication date: October 21, 2005  
For further information, please call: (512) 936-6710



#### SUBCHAPTER F. MEDICALLY UNDER-SERVED COMMUNITY-STATE MATCHING INCENTIVE PROGRAM

**10 TAC §§257.301, 257.303, 257.305, 257.307, 257.309, 257.311, 257.313, 257.315, 257.317, 257.319, 257.321, 257.325, 257.327**

The amendments are adopted under the authority of Chapter 487, §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this chapter.

There are no other codes, articles or statutes affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 4, 2006.

TRD-200600050  
Charles S. Stone  
Executive Director  
Office of Rural Community Affairs  
Effective date: January 24, 2006  
Proposal publication date: October 21, 2005  
For further information, please call: (512) 936-6701



#### SUBCHAPTER G. PERMANENT FUND FOR RURAL HEALTH FACILITY CAPITAL IMPROVEMENT

**10 TAC §§257.401 - 257.411**

The amendments are adopted under the authority of Chapter 487, §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this chapter.

There are no other codes, articles or statutes affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 4, 2006.

TRD-200600051

Charles S. Stone  
Executive Director  
Office of Rural Community Affairs  
Effective date: January 24, 2006  
Proposal publication date: October 21, 2005  
For further information, please call: (512) 936-6701



#### SUBCHAPTER H. RURAL EMERGENCY MEDICAL SERVICES SCHOLARSHIP INCENTIVE PROGRAM

**10 TAC §§257.501, 257.503, 257.505, 257.507, 257.509, 257.511, 257.513, 257.515, 257.517, 257.519, 257.521, 257.523, 257.525, 257.527**

The repeals are adopted under the authority of Chapter 487, §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this chapter.

There are no other codes, articles or statutes affected by the repeals.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 4, 2006.

TRD-200600052  
Charles S. Stone  
Executive Director  
Office of Rural Community Affairs  
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Proposal publication date: October 21, 2005  
For further information, please call: (512) 936-6701



#### SUBCHAPTER J. DESIGNATION OF A HOSPITAL AS A RURAL HOSPITAL

**10 TAC §§257.701, §257.703**

The amendments are adopted under the authority of Chapter 487, §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this chapter.

There are no other codes, articles or statutes affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 4, 2006.

TRD-200600060  
Charles S. Stone  
Executive Director  
Office of Rural Community Affairs  
Effective date: January 24, 2006  
Proposal publication date: October 21, 2005  
For further information, please call: (512) 936-6701

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## SUBCHAPTER K. RURAL COMMUNITIES HEALTH CARE INVESTMENT PROGRAM

### 10 TAC §257.801, §257.807

The amendments are adopted under the authority of Chapter 487, §487.052 of the Texas Government Code which authorizes the Executive Committee to adopt rules to implement the provisions of this chapter.

There are no other codes, articles or statutes affected by the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 4, 2006.

TRD-200600061

Charles S. Stone

Executive Director

Office of Rural Community Affairs

Effective date: January 24, 2006

Proposal publication date: October 21, 2005

For further information, please call: (512) 936-6701

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## TITLE 22. EXAMINING BOARDS

### PART 9. TEXAS MEDICAL BOARD

#### CHAPTER 161. GENERAL PROVISIONS

##### 22 TAC §§161.1 - 161.3, 161.6

The Texas Medical Board adopts amendments to §§161.1 - 161.3 and 161.6, concerning General Provisions, without changes to the proposed text as published in the November 4, 2005, issue of the *Texas Register* (30 TexReg 7114) and will not be republished.

The amendment to §161.1 changes "Texas State Board of Medical Examiners" to "Texas Medical Board;" changes "Texas State Board of Physician Assistant Examiners" to "Texas Physician Assistant Board;" makes reference to all boards administered by the Texas Medical Board. The amendment to §161.2 changes "Texas State Board of Physician Assistant Examiners" to "Texas Physician Assistant Board." The amendments to §161.3 changes the number of members of the Texas Medical Board; changes the number of public members of the Board; adds "without excuse approved by a majority vote of the board". The amendment to §161.6 changes "Texas State Board of Physician Assistant Examiners" to "Texas Physician Assistant Board."

The following comments were received from the Texas Medical Association (TMA):

Comment: The amendments conform the rules to technical changes made during Sunset Review. The Association supports the proposed amendments.

Response: Agree

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary

to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 5, 2006.

TRD-200600067

Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

Effective date: January 25, 2006

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For further information, please call: (512) 305-7016

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## CHAPTER 163. LICENSURE

The Texas Medical Board adopts amendments to §§163.1, 163.2, 163.4 - 163.6 and the repeal of §§163.3, 163.7 and 163.14, concerning Licensure. Sections 163.1 and 163.6 and the repeal of §§163.3, 163.7 and 163.14 are adopted without changes to the proposed text as published in the November 4, 2005, issue of the *Texas Register* (30 TexReg 7117) and will not be republished. Sections 163.2, 163.4, and 163.5 are adopted with changes to the proposed text as published in the November 4, 2005, issue of the *Texas Register* (30 TexReg 7117). Sections 163.4 and 163.5 are adopted with minor referencing changes. The text of the rules will be republished.

The amendments to §163.1 change "Texas State Board of Medical Examiners" to "Texas Medical Board;" delete acceptable licensing examination from definitions to eliminate duplication; delete definitions regarding Telemedicine to reorganize and move to Chapter 172. The amendments to §163.2 designate the primary license issued by the Medical Board as a "Full" license; combine §163.3 into §163.2 for better organization and clarity. The amendments to §163.4 change "Texas State Board of Medical Examiners" to "board." The amendments to §163.5 change "Texas State Board of Medical Examiners" to "board." The amendments to §163.6 refer to "successor" or USMLE examination; add COMLEX-USA as acceptable examination; deletes NBOME I, II, and FLEX II as acceptable exam; eliminate exceptions for three-attempt limit; make rule follow statutory change for limit on time to complete examination. Section 163.3 is being incorporated into §163.2. Section 163.7 is being incorporated into §172.11. Section 163.14 is being incorporated into §172.12. Therefore each of these sections are repealed and will be reserved for future rulemaking.

The following comments were received:

1. Texas Medical Association (TMA):

Comment #1: These provisions amend the licensure provisions of the Board rules. The Association supports the proposed changes.

Response: Agree

2. University of North Texas, Health Science Center at Fort Worth

Comment #1: I certainly appreciate the need for standards in order to assure that qualified physicians practice in the state of

Texas. Perhaps there are instances, such as this, where the people of Texas are better served by modifying the standards if proficiency can be otherwise assured.

Response: Under changes made to the Medical Practice Act during the last legislative session, Section 155.056 Tex. Occ.Code, now requires that an applicant pass each part of an examination within three attempts. Since this is a statutory requirement, the Board does not have authority to modify this requirement.

Texas Scottish Rite Hospital for Children:

Comment #1: I would like to express my opinion in regard to the current rule development and the limits of the examination attempts. The current rule limits the number of attempts to three. This is not consistent with the vast majority of other states in our country which do not impose any limit on the number of attempts. If a physician is able to pass the exams, this should indicate sufficient knowledge.

Response: Same

#### 4. UT Southwestern Medical Center

Comment #1: The current rule limits the number of attempts to three. I consider this rule to be unfair for the following reasons:

The Board doesn't offer any alternatives of obtaining a Texas license to physicians that have required more than three attempts to pass the steps of the USMLE. I have personally known several individuals who are not gifted in the art of taking standardized tests, yet are excellent physicians. Additionally, some U.S. training programs (both medical schools and residency training programs) have previously encouraged their students/residents to take these exams, even before fully preparing for them, for "practice." While this seems unwise to me, some physicians have fallen prey to this advice, and thus taken these exams multiple times, thinking they were harmlessly "practicing" and discovering later that these practice attempts will prevent them from obtaining a medical license in our state.

Perhaps rather than prohibiting a physician in this situation from ever practicing medicine in Texas, alternate strategies could be considered. For example, if the Board is concerned that a physician who required multiple attempts to pass the step(s) of the USMLE is not sufficiently knowledgeable to practice medicine, additional CME in the area of concern could be required for that specific physician to obtain licensure. Or perhaps performance reviews by either colleagues or supervisors of the physician in question could also be considered in this evaluation. Whatever the criteria, I believe that the Board should consider each of these cases on an individual basis, perhaps designing a plan tailored for the physician in question, before permanently denying licensure based only on the failure to pass the USMLE in 3 steps.

While I agree that standardized tests are a good way to identify some individuals incapable of mastering the concepts of medicine, I also believe that these same tests may exclude intelligent individuals who are excellent physicians, yet lack skills in the area of test-taking.

Response: Same

#### 5. Several Individuals comments:

Comment #1: The current rule limits the number of attempts to three. I and several of my colleagues consider this rule to be unfair.

Response: Same

Comment #2: My comments are regarding Rules prescribing limit for applicants taking different exam types and conforming to new statutory provisions that applicants must pass exam within 3 attempts. Existing exceptions criteria are eliminated.

Response: Same

Comment #3: A modification to this rule should be made to allow qualified physicians to obtain the Texas Medical License to practice their profession in the state of Texas regardless of the number of attempts on the medical license examination.

Response: Same

### 22 TAC §§163.1, 163.2, 163.4 - 163.6

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

#### §163.2. *Full Texas Medical License.*

(a) United States/Canadian Medical School Graduates. To be eligible for full licensure, an applicant who is a graduate from a school in the United States or Canada must:

- (1) be 21 years of age;
- (2) be of good professional character as defined under §163.1(9) of this title;
- (3) have completed 60 semester hours of college courses as defined under §163.1(11) of this title;
- (4) be a graduate of an acceptable approved medical school as defined under §163.1(2) of this title;
- (5) have successfully completed a one-year training program of graduate medical training in the United States or Canada as defined under §163.1(11) of this title;
- (6) submit evidence of passing an examination accepted by the board for licensure as defined under §163.6(a) of this title;
- (7) pass the Texas Medical Jurisprudence Examination with a score of 75 or better within three attempts.

(b) Graduates of Acceptable Unapproved Medical Schools. To be eligible for full licensure, an applicant who is a graduate from a school outside the United States or Canada must:

- (1) be 21 years of age;
- (2) be of good professional character as defined under §163.1(9) of this title;
- (3) have completed 60 semester hours of college courses as defined under §163.1(11) of this title;
- (4) be a graduate of an acceptable unapproved medical school as defined under §163.1(2) of this title;
- (5) have successfully completed a three-year training program of graduate medical training in the United States or Canada as defined under §163.1(14) of this title;
- (6) submit evidence of passing an examination accepted by the board for licensure as defined under §163.6 of this title;
- (7) pass the Texas Medical Jurisprudence Examination with a score of 75 or better within three attempts;



(8) be eligible for licensure in country of graduation as defined under §163.1(8) of this title;

(9) possess a valid certificate issued by the Educational Commission for Foreign Medical Graduates (ECFMG);

(10) have the ability to communicate in the English language; and

(11) have supplied all additional information that the board may require concerning the applicant's medical school.

*§163.4. Procedural Rules for Licensure Applicants.*

(a) All applicants for licensure:

(1) if appropriate, are encouraged to use the Federation Credentials Verification Service (FCVS) offered by the Federation of State Medical Boards of the United States (FSMB) to verify medical education, postgraduate training, licensure examination history, board action history and identity;

(2) whose applications have been filed with the board in excess of one year will be considered expired. Any fee previously submitted with that application shall be forfeited. Any further request for licensure will require submission of a new application and inclusion of the current licensure fee;

(3) who in any way submit a false or misleading statement, document, or certificate in an application may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be issued a Texas license;

(4) on whom adverse information is received by the board may be required to appear before the board. It will be at the discretion of the board whether or not the applicant will be issued a Texas license;

(5) shall be required to comply with the board's rules and regulations which are in effect at the time the application form and fee are filed with the board;

(6) may be required to sit for additional oral, written, mental or physical examinations that, in the opinion of the board, are necessary to determine competency and ability of the applicant;

(7) must have the application for licensure complete in every detail 20 days prior to the board meeting in which they are considered for licensure. Applicants with complete applications may qualify for a Temporary License prior to being considered by the board for licensure, as required by §172.11 of this title (relating to Temporary Licensure--Regular); and

(8) that receive any medical or osteopathic medical education in the United States must have obtained such education while enrolled as a full-time or visiting student at a medical school that is accredited by an accrediting body officially recognized by the United States Department of Education as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree in the United States. This subsection does not apply to postgraduate medical education or training. An applicant who is unable to comply with this requirement must demonstrate that the applicant either:

(A) received such medical education in a hospital or teaching institution sponsoring or participating in a program of graduate medical education accredited by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or the board in the same subject as the medical or osteopathic medical education if the hospital or teaching institution has an agreement with the applicant's school; or

(B) is specialty board certified by a board approved by the Bureau of Osteopathic Specialists or the American Board of Medical Specialties.

(b) Applicants for a license must subscribe to an oath in writing. The written oath is part of the application.

(c) An applicant is not eligible for a license if:

(1) the applicant holds a medical license that is currently restricted for cause, canceled for cause, suspended for cause, or revoked by a state of the United States, a province of Canada, or a uniformed service of the United States;

(2) an investigation or a proceeding is instituted against the applicant for the restriction, cancellation, suspension, or revocation of the applicant's medical license in a state of the United States, a province of Canada, or a uniformed service of the United States; or

(3) a prosecution is pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony or a misdemeanor that involves moral turpitude.

*§163.5. Licensure Documentation.*

(a) An applicant must appear for a personal interview at the board offices and present original documents to a representative of the board for inspection. Original documents may include, but are not limited to, those listed in subsections (b) - (e) of this section.

(b) Documentation required of all applicants for licensure.

(1) Birth Certificate/Proof of Age. Each applicant for licensure must provide a copy of a valid passport or birth certificate and translation if necessary to prove that the applicant is at least 21 years of age. In instances where such documentation is not available, the applicant must provide copies of other suitable alternate documentation.

(2) Name Change. Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization, the applicant should send the original naturalization certificate by certified mail to the board office for inspection.

(3) Examination Scores. Each applicant for licensure must have a certified transcript of grades submitted directly from the appropriate testing service to the board for all examinations accepted by the board for licensure.

(4) Dean's Certification. Each applicant for licensure must have a certificate of graduation submitted directly from the medical school on a form provided to the applicant by the board. The applicant shall attach a recent photograph, meeting United States Government passport standards, to the form before submitting to the medical school. The school shall have the Dean of the medical school or designated appointee sign the form attesting to the information on the form and placing the school seal over the photograph.

(5) Evaluations. All applicants must provide evaluations completed by an appropriate supervisor, on a form provided by the board, of their professional affiliations for the past ten years or since graduation from medical school, whichever is the shorter period.

(6) Medical School Transcript. Each applicant must have his or her medical school submit a transcript of courses taken and grades obtained.

(7) National Practitioner Data Bank/Health Integrity and Protection Data Bank (NPDB-HIPDB). Each applicant must contact

the NPDB-HIPDB and have a report of action submitted directly to the board on the applicant's behalf.

(8) Graduate Training Verification. Each applicant must have each of the training programs in which they have participated in submit verification on a form provided by the board. The evaluation must show the beginning and ending dates of the program and state that the program was successfully completed.

(9) Specialty Board Certification. Each applicant who has obtained certification by a board that is a member of the American Board of Medical Specialties or the Bureau of Osteopathic Specialists must submit a copy of the certificate issued by the member showing board certification.

(10) Medical License Verifications. Each applicant must have every state in which he or she has ever been licensed, regardless of the current status of the license, submit directly to this board a letter verifying the status of the license and a description of any sanctions or pending disciplinary matters.

(11) U.S. medical education. Applicants must demonstrate that any medical school education that was completed in the United States in satisfaction of their core basic and clinical science courses as established by the Texas Higher Education Coordinating Board, the Liaison Council on Medical Education, and/or the American Osteopathic Association, and in satisfaction of the 130 weeks of required medical education was accredited by an accrediting body officially recognized by the United States Department of Education as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree. An applicant who is unable to comply with these requirements may in the alternative demonstrate that the applicant:

(A) received such medical education in a hospital or teaching institution sponsoring or participating in a program of graduate medical education accredited by the Accrediting Council for Graduate Medical Education, the American Osteopathic Association, or approved by the board under Section 171.4 of this title (relating to Board-Approved Postgraduate Fellowship Training Programs) in the same subject as the medical or osteopathic medical education if the hospital or teaching institution has an agreement with the applicant's school; or

(B) is specialty board certified by a board approved by the Bureau of Osteopathic Specialists or the American Board of Medical Specialties.

(c) Applicants for licensure who are graduates of medical schools outside the United States or Canada must furnish all appropriate documentation listed in this subsection, as well as that listed in subsections (a) and (b) of this section.

(1) Educational Commission for Foreign Medical Graduates (ECFMG) Status Report. Each applicant must submit an ECFMG status report.

(2) Unique Documentation. The board may request documentation unique to an individual unapproved medical school and additional documentation as needed to verify completion of medical education that is substantially equivalent to a Texas medical school education. This may include but is not limited to:

- (A) a copy of the applicant's ECFMG file;
- (B) a copy of other states' licensing files;
- (C) copies of the applicant's clinical clerkship evaluations; and
- (D) a copy of the applicant's medical school file.

(3) Certificate of Registration. Each applicant must provide a copy of his or her certificate to practice in the country in which his or her medical school is located. If a certificate is unavailable, a letter submitted directly to this board from the body governing licensure of physicians in the country in which the school is located, will be accepted. The letter must state that the applicant has met all the requirements for licensure in the country in which the school is located. If an applicant is not licensed in the country of graduation due to a citizenship requirement, a letter attesting to this, submitted directly to this board, will be required.

(4) Clinical Clerkship Affidavit. A form, supplied by the board, to be completed by the applicant, is required listing each clinical clerkship that was completed as part of an applicant's medical education. The form will require the name of the clerkship, where the clerkship was located (name and location of hospital) and dates of the clerkship.

(5) "Substantially equivalent" documentation. An applicant who is a graduate of a medical school that is located outside the United States and Canada must present satisfactory proof to the board that each medical school attended was substantially equivalent to a Texas medical school at the time of attendance as defined under §163.1(12) of this title. This may include but is not limited to:

(A) a Foreign Educational Credentials Evaluation from the Office of International Education Services of the American Association of Collegiate Registrars and Admissions Officers (AACRAO);

(B) a board questionnaire, to be completed by the medical school and returned directly to board;

(C) a copy of the medical school's catalog;

(D) verification from the country's educational agency confirming the validity of school and licensure of applicant;

(E) proof of written agreements between the medical school and all hospitals that are not located in the same country as the medical school, where medical education was obtained;

(F) proof that the faculty members of the medical school had written contracts with the school if they taught a course outside the country where the medical school was located;

(G) proof that the medical education courses taught in the United States complied with the higher education laws of the state in which the courses were taught;

(H) proof that the faculty members of the medical school who taught courses in the United States were on the faculty of the program of graduate medical education when the courses were taught; and

(I) proof that all education completed in the United States or Canada was while the applicant was enrolled as a visiting student as evidenced by a letter of verification from the U.S. or Canadian medical school.

(6) Medical Diploma. Each applicant must submit a copy of his or her medical diploma, and translation if necessary.

(d) Applicants may be required to submit other documentation, which may include the following:

(1) Translations. Any document that is in a language other than the English language will need to have a certified translation prepared and a copy of the translation will have to be submitted along with the translated document.

(A) An official translation from the medical school (or appropriate agency) attached to the foreign language transcript or other document is acceptable.

(B) If a foreign document is received without a translation, the board will send the applicant a copy of the document to be translated and returned to the board.

(C) Documents must be translated by a translation agency that is a member of the American Translations Association or a United States college or university official.

(D) The translation must be on the translator's letterhead, and the translator must verify that it is a "true word for word translation" to the best of his/her knowledge, and that he/she is fluent in the language translated, and is qualified to translate the document.

(E) The translation must be signed in the presence of a notary public and then notarized. The translator's name must be printed below his/her signature. The notary public must use this phrase: "Subscribed and Sworn to this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_." The notary must then sign and date the translation, and affix his/her Notary Seal to the document.

(2) Arrest Records. If an applicant has ever been arrested, a copy of the arrest and arrest disposition need to be requested from the arresting authority and said authority must submit copies directly to this board.

(3) Malpractice. If an applicant has ever been named in a malpractice claim filed with any medical liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must do the following:

(A) have each medical liability carrier complete a form furnished by the board regarding each claim filed against the applicant's insurance;

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter directly to the board explaining the allegation, dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. The letter should include supporting court records. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided; and

(C) provide a statement, composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(4) Inpatient Treatment for Alcohol/Substance Abuse or Mental Illness. Each applicant who has been admitted to an inpatient facility within the last five years for the treatment of alcohol/substance abuse or mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or physical illness shall submit documentation to include, but not limited to:

(A) an applicant's statement explaining the circumstances of the hospitalization;

(B) all records, submitted directly from the inpatient facility;

(C) a statement from the applicant's treating physician/psychologist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(D) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee.

(5) Outpatient Treatment for Alcohol/Substance Abuse or Mental Illness. Each applicant who has been treated on an outpatient basis within the last five years for alcohol/substance abuse or mental illness (recurrent or severe major depressive disorder, bipolar disorder, schizophrenia, schizoaffective disorder, or any severe personality disorder), or physical illness shall submit documentation to include, but not limited to:

(A) an applicant's statement explaining the circumstances of the outpatient treatment;

(B) a statement from the applicant's treating physician/psychologist as to diagnosis, prognosis, medications prescribed, and follow-up treatment recommended; and

(C) a copy of any contracts signed with any licensing authority or medical society or impaired physician's committee.

(6) DD214. A copy of the DD214, indicating separation from any branch of the United States military.

(7) Premedical School Transcript. Applicants, upon request, may be required to submit a copy of the record of their undergraduate education. Transcripts must show courses taken and grades obtained. If determined that the documentation submitted by the applicant is not sufficient to show proof of the completion of 60 semester hours of college courses other than in medical school or education required for country of graduation, the applicant may be requested to contact the Office of Admissions at The University of Texas at Austin for course work verification.

(8) Fingerprint Card. Upon request, applicants must complete a fingerprint card and return to the board as part of the application.

(9) Additional Documentation. Additional documentation as is deemed necessary to facilitate the investigation of any application for medical licensure.

(e) The board may, in unusual circumstances, allow substitute documents where proof of exhaustive efforts on the applicant's part to secure the required documents is presented. These exceptions are reviewed by the board's executive director on a case-by-case basis.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 5, 2006.

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Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



## 22 TAC §§163.3, 163.7, 163.14

The repeals are adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 172. TEMPORARY AND LIMITED LICENSES

The Texas Medical Board adopts amendments to §§172.1, 172.2, 172.5, 172.8 and new §172.11 and §172.12, concerning Temporary and Limited Licenses. Section 172.2 is adopted with a minor reference change to the proposed text as published in the November 4, 2005, issue of the *Texas Register* (30 TexReg 7125) and will be republished. Sections 172.1, 172.5, 172.8, 172.11 and 172.12 are adopted without changes and will not be republished.

Elsewhere in this issue of the *Texas Register*, new §172.13, concerning Limited License for Practice of Administrative Medicine, is being withdrawn. This section is not adopted, so that the Texas Medical Board can seek further comment.

The amendments to §172.1 add limited licenses to the purpose of Chapter 172. The amendments to §172.2 add limited licenses to definitions and move definitions regarding Telemedicine from §163.1(b). The amendments to §172.5 changes the name of Visiting Physician Temporary "License" to "Permit" to comply with previous amendments to §163.15. The amendments to §172.8 revises the rule to conform to the requirements of SB 419. New §172.11 moves previous §163.7 to Chapter 172 to reorganize licensure rules. New §172.12 moves former §163.14 to Chapter 172 for better organization.

The following comments were received:

### 1. Texas Medical Association (TMA):

Comment #1: These changes and additions add new definitions to the current definitions and provides for temporary and limited licenses. The Texas Medical Association generally supports the new definitions and ability of the board to issue temporary licenses.

Response: Agree

22 TAC Section 172.13

### 1. Texas Medical Association (TMA):

Comment #1: The Association is aware that concerns have been raised about the affect and implementation of the new legislatively mandated provisions concerning limited licenses for the practice of "administrative medicine" as contained in proposed new rule 172.13. The Association believes that the Board has made a good faith effort to address the change in the Medical Practice Act made by the 79th Legislature during Sunset Review. The Association is aware that concerns have been expressed as to the impact of the proposed rule on health plan or insurance

medical directors and that such concerns may require the Board to further discuss and review the proposed rules. TMA would be pleased to be a part of that further discussion and review.

Response: Section 172.13 was not adopted so that the Board could seek further comment.

### 2. Aetna in the State of Texas:

Comment #1: The Texas Medical Board's draft rule would forbid a physician holding an administrative medical license from making medical necessity determinations.

Response: Same

Comment #2: I ask that you revise the draft rule and permit managed care (HMO and PPO) medical directors holding an administrative medical license to make medical necessity determinations.

Response: Same

Comment #3: There is a substantive and substantial difference in medical necessity determination made by managed care medical directors vs. treating physicians. Medical Directors of managed care organizations make only coverage determinations. Treating physicians holding a full medical license make only treatment determinations. Coverage determinations affect only where the physician or health care provider looks for payment. Treatment determinations direct the course of the patients' treatment. Thus, the medical necessity determinations that managed care medical directors make are administrative in nature, and appropriate for a physician holding an administrative medical license to make.

Response: Same

### 3. Texas Association of Health Plans (TAHP)

Comment #1: The administrative medicine license would not include the authority to diagnose or treat patients, prescribe dangerous drugs or controlled substances, delegate medical acts or prescriptive authority, or issue opinions regarding medical necessity. While this proposal does not affect current holders of a Texas medical license, it does create a barrier for health plans attempting to bring medical directors from out of state to Texas. Medical directors must have the ability to issue opinions on medical necessity as it relates to coverage determinations as a core function of their jobs. Because many medical directors no longer meet the requirements to be considered in "active practice," an unrestricted license would not be available to a medical director coming from outside of Texas and an administrative medical license would not allow them to perform an essential element of their jobs.

Response: Same

Comment #2: Additionally, TAHP advocates that a process be established that would allow recipients of an administrative medicine license to attain an unrestricted license.

Response: Same

### 4. Individual comments:

Comment #1: Specifically proposed rule 172.13 of the Texas Medical Board Rules entitled Limited License for Practice of Administrative Medicine would not only limit managerial physicians but would also broadly limit the practice of medicine of many physicians employed to oversee medical students, do research, engage in reviews of medical necessity, act as Presidents of na-

tional medical societies, work for insurance companies and so forth.

Response: Same.

## SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

### 22 TAC §172.1, §172.2

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

#### §172.2. Construction and Definitions.

(a) Unless otherwise indicated, temporary license holders under this chapter shall be subject to the duties, limitations, disciplinary actions, rehabilitation order provisions, and procedures applicable to licensees in the Medical Practice Act and board rules. Temporary license holders under this chapter shall also be subject to the limitations and restrictions elaborated in this chapter.

(b) Temporary and limited license holders under this chapter shall cooperate with the board and board staff involved in investigation, review, or monitoring associated with the license holder's practice of medicine. Such cooperation shall include, but not be limited to, written response to the board or board staff written inquiry within 14 days of receipt of such inquiry.

(c) In accordance with the Medical Practice Act, the board shall retain jurisdiction to discipline a temporary or limited license holder whose license has been terminated, canceled, and/or expired if the license holder violated the Medical Practice Act or board rules during the time the license was valid.

(d) The issuance of a temporary or limited license shall not be construed to obligate the board to issue subsequent permits or licenses. The board reserves the right to investigate, deny a permit, temporary or limited license, or full licensure, and/or discipline a physician regardless of when the information was received by the board.

(e) Nothing in this chapter shall be construed to prevent the board from issuing temporary or limited licenses to those physicians awaiting full licensure pursuant to Section 172.11 of this title (relating to Temporary Licensure--Regular) or to those licensees who qualify for CME temporary licenses pursuant to Section 166.2(k) of this title (relating to CME temporary licenses).

(f) In addition to other definitions that may apply to licensure, the following words and terms, when used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

(1) Act that is part of patient care service--Any diagnosis, assessment, or treatment including the taking of diagnostic imaging studies as well as the preparation of pathological material for examination.

(2) Episodic consultation--Consultation on an irregular or infrequent basis involving no more than 24 patients of a physician's diagnostic or therapeutic practice per calendar year. Multiple consultations may be performed for one or more patients up to 24 patients per calendar year.

(3) Informal consultation--Consultation performed outside the context of a contractual relationship and on an irregular or infrequent basis without the expectation of or exchange of direct or indirect compensation.

(4) Patient care service initiated in this state--Any act constituting the practice of medicine as defined in this chapter in which the patient is physically located in Texas at the time of diagnosis, treatment, or testing.

(5) Person--An individual unless otherwise expressly made applicable to a partnership, association, or corporation.

(6) Practice of medicine--A person shall be considered to be practicing medicine under any of the following circumstances listed in subparagraphs (A) - (D) of this paragraph. This definition does not negate the responsibility of applicants to demonstrate engagement in the active practice of medicine as set forth in Section 163.11 of this title (relating to Active Practice of Medicine).

(A) the person publicly professes to be a physician or surgeon and diagnoses, treats, or offers to treat any mental or physical disease or disorder, or any physical deformity or injury by any system or method or to effect cures thereof;

(B) the person diagnoses, treats or offers to treat any mental or physical disease or disorder, or any physical deformity or injury by any system or method and to effect cures thereof and charges therefor, directly or indirectly, money or other compensation;

(C) the person exercises medical judgment, renders an opinion, or gives advice concerning the diagnosis or treatment of a patient, or makes any determination regarding the appropriate or necessary medical response to a particular patient's medical condition that affects the medical care of the patient; or

(D) the person is physically located in another jurisdiction, other than the state of Texas, and through any medium performs an act that is part of patient care service initiated in this state that would affect the diagnosis or treatment of the patient.

(7) State--Any state, territory, or insular possession of the United States and the District of Columbia.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



## SUBCHAPTER B. TEMPORARY LICENSES

### 22 TAC §§172.5, 172.8, 172.11

The amendments and new rule are adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. LIMITED LICENSES

### 22 TAC §172.12

The new rule is adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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## CHAPTER 175. FEES, PENALTIES AND APPLICATIONS

The Texas Medical Board adopts the repeal and replacement of §§175.1 - 175.4, concerning Fees, Penalties and Applications, without changes to the proposed text as published in the November 4, 2005, issue of the *Texas Register* (30 TexReg 7129) and will not be republished. New Chapter 175 is entitled Fees, Penalties and Forms.

The repeal and new rules are necessary for reorganization and general update and cleanup of the chapter. The changes generally carry forward the same fees previously charged, except that: the fee for an office-based anesthesia site is eliminated, a new fee for physicians who practice office-based anesthesia is established, and a fee for inspection of an office-based anesthesia site is established; a new fee for the new Administrative Medicine License is established; certain outdated fees are eliminated; and the list of forms used for applications for licenses is updated.

The following comments were received:

1. Texas Medical Association (TMA):

Comment #1: These rule changes provide for a repeal and publishing as new rules concerning Fees, Penalties and Forms. These rules provide for an update to the Board rules and, as such, the Association has only one comment. The rules concerning Office Based Anesthesia are still under review by

the Board, its stakeholders and an ad hoc committee. It is the hope of the Association that the cost for the biennial registration fee for office-based anesthesia will remain flexible during the ongoing review. As the new changes to the statute relating to office based anesthesia will potentially encompass a greater number of physicians. It is important to note that the costs of maintaining a physician's practice has been rising but that revenue has generally been capped or is declining. Practice viability must be a factor to consider when setting a fee.

Response: Agree

Individual comments:

Comment #1: Why is being a doctor so expensive in the state of Texas vs. any other state in this country?

Response: The Board believes that the proposed fees are required to recoup the costs of investigations of an application for licensure.

Comment #2: Why should we pay full fees when we aren't even actively practicing in your state?

Response: The Legislature has not authorized the Board to set different fees based on whether the licensee actually practices in Texas.

Comment #3: Are you trying to move towards states like Colorado where inactive license fees are assessed every two years at a much reduced fee? If not, why?

Response: Same

### 22 TAC §§175.1 - 175.4

The repeals are adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 175. FEES, PENALTIES AND FORMS

### 22 TAC §§175.1 - 175.4

The new rules are adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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## CHAPTER 178. COMPLAINTS

### 22 TAC §§178.2 - 178.8

The Texas Medical Board adopts amendments to §§178.2 - 178.8, concerning Complaints, without changes to the proposed text as published in the November 4, 2005, issue of the *Texas Register* (30 TexReg 7132) and will not be republished.

The amendment to §178.2 clarifies definition of "Complainant;" conforms terms "Preliminary Investigation" and "Official Investigation" to statutory changes made in SB 419. The amendment to §178.3 changes the name of the agency to conform with statutory change made by SB 419. The amendment to §178.4 clarifies confidentiality of identity of a Complainant and waiver of confidentiality. The amendment to §178.5 conforms and makes consistent use of term "preliminary investigation" to conform to statutory changes made in SB 419. The amendment to §178.6 conforms and makes consistent use of terms "preliminary investigation" and "official investigation," to conform to statutory changes made in SB 419; conforms term "Expert Physician Reviewers" to statutory changes. The amendment to §178.7 conforms name of Informal Show Compliance and Settlement Conference to other rules. The amendment to §178.8 clarifies rule dealing with appeals of dismissal of complaints by complainants.

The following comments were received:

#### 1. Texas Medical Association (TMA):

Comment #1: These rules provide for changes in how complaints are processed and investigated at the Board. Many of the rule changes are to conform the rules to changes made in the Medical Practice Act. TMA supports changes as they provide clarity and conformity between statute and rule.

Response: Agree

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 179. INVESTIGATIONS

### 22 TAC §§179.2 - 179.4, 179.6

The Texas Medical Board adopts the amendments to §§179.2 - 179.4 and 179.6, concerning Investigations, without changes to the proposed text as published in the November 4, 2005, issue of the *Texas Register* (30 TexReg 7134) and will not be republished.

The amendment to §179.2 clarifies the definition of a Complainant. The amendment to §179.3 clarifies that any person who has provided a statement to the board may obtain a copy of that statement. The amendment to §179.4 establishes time for obtaining medical records under normal circumstance at 14 days and requires that evidence of intemperate use of drugs or alcohol be evidence that would lead a reasonable person to believe that the licensee is impaired. The amendment to §179.6 provides definition of "good cause" for not scheduling an ISC within 180 days required by SB 419, and notice to parties of failure to schedule within statutory time.

The following comments were received:

#### 1. Texas Medical Association (TMA)

Comment #1: These rules concern investigations. Many of the amendments are "conforming amendments."

Response: Agree

Comment #2: However, of note is a change to Section 179.4(a) which establishes for the first time the time frame to supply medical records or other original documentation to the Board when requested by a board investigator. That time is initially set at 14 calendar days unless the records are at risk for being lost, damaged or destroyed. This rule will help establish uniformity and certainty in complying with record requests by the Board. The Board has also established a standard for determining if there is evidence that a licensee has engaged in intemperate use of drugs or alcohol. The standard is that a "reasonable person" would believe that the licensee is impaired. Once again, established standards help establish uniformity and certainty. Establishment of reasonable standards is supported by the Association.

Response: Agree

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §152.001 and §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 180. REHABILITATION ORDERS

### 22 TAC §180.1

The Texas Medical Board adopts an amendment to §180.1, concerning Rehabilitation Orders, with changes to the proposed text as published in the November 4, 2005, issue of the *Texas Register* (30 TexReg 7136) and will be republished. The section is adopted with changes to correct a typographical error in subsection (f)(4).

The amendment to §180.1 revises subsection (c)(1) to reflect exact language of statute; conforms the rule to statutory requirements of Senate Bill 419 that Rehabilitation Order may not be used if there is a violation of the standard of care related to intemperate use of drugs or alcohol; adds the requirement to inform and provide information to a local or statewide private medical association if the rehabilitation order requires the licensee to participate in activities or programs provided by the organization; and reorganizes the rule for clarity.

The following comment was received:

#### 1. Texas Medical Association (TMA):

Comment #1: This rule provides for conforming amendments to the eligibility and issuance of rehabilitation orders. A serious concern of the Association was the possibility that as an impaired physician who had any patient contact or provided any patient treatment would be considered per se violation of the standard of care. The Medical Practice Act was amended to prohibit the issuance of a rehabilitative order if the impairment of the physician was the cause of a violation of the standard of care. The initial rules provided a presumption that few physicians, if any, could overcome. The Board understood this concern and changed its rules to prohibit representatives of the board from recommending the issuance of a rehabilitative order if they determined that a violation of the standard of care was the result of the intemperate use of drugs or alcohol. Information may be presented by the licensee, applicant or staff of the board to representatives of the Board who will make the ultimate decision and recommendation at their discretion. This establishes and maintains the duty of the staff of the Board to investigate and move forward with facts to show a violation of the standard of care due to impairment. It retains ultimate discretion and authority for the Board. The Texas Medical Association supports this change and believe it accurately carries out the intent of the legislature.

Response: Agree

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

#### §180.1. Rehabilitation Orders.

(a) Purpose of chapter. The purpose of this chapter is to establish the process for the board's review and proposal of a nondisciplinary

private rehabilitation order ("rehabilitation order") to a licensee or licensure applicant ("applicant") pursuant to the Medical Practice Act ("Act"), Tex. Occ. Code Ann. §§164.202-.204.

#### (b) Purposes of rehabilitation orders.

(1) To provide an incentive to a licensee or applicant to seek early assistance with drug or alcohol related problems or mental or physical conditions that present a potentially dangerous limitation or inability to practice medicine with reasonable skill and safety.

(2) To protect the public by requiring the impaired licensee or applicant to obtain treatment and/or limit or refrain from the practice of medicine while suffering from an impairment.

(c) Eligibility for rehabilitation order. The board may issue a rehabilitation order for a licensee or applicant, as a prerequisite for issuing a license, for the following reasons:

(1) intemperate use of drugs or alcohol directly resulting from habituation or addiction caused by medical care or treatment provided by a physician;

(2) the licensee or applicant self-reported intemperate use of drugs or alcohol as set out in subsection (f) of this chapter, and has not previously been the subject of a substance abuse-related order of the board;

(3) a court has determined that the licensee or applicant is of unsound mind;

(4) the licensee or applicant has an impairment as determined by a mental or physical examination; or

(5) an admission by the licensee or applicant of an illness or a physical or mental condition that limits or prevents the person's practice of medicine with reasonable skill and safety.

(d) Factors for board consideration in proposing a rehabilitation order.

(1) General. In determining whether to recommend a rehabilitation order to an otherwise eligible licensee or applicant, the board shall consider all relevant factors.

(2) Federal and state drug and alcohol laws. Absent a showing of good cause by the licensee or applicant, the board may not grant a rehabilitation order if any of the following factors exist:

(A) the licensee or applicant has been found guilty, pled guilty, or received deferred adjudication of any felony or misdemeanor related to the intemperate use of drugs or alcohol at issue;

(B) the licensee or applicant was required to or voluntarily surrendered his/her drug license(s) or certification(s) issued by the Federal Drug Enforcement Administration (DEA), Texas Department of Public Safety (DPS) or comparable authority of another state in connection with a criminal investigation related to the intemperate use of drugs or alcohol at issue; and

(C) the licensee's or applicant's intemperate use of drugs or alcohol led to a violation of Sections 481 and 483 of the Texas Health and Safety Code or a violation of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.).

(3) The licensee or applicant and board staff may present information to the Board's representatives relevant to whether any violation of the standard of care is a result of the intemperate use of drugs or alcohol. The Board's representatives may not recommend a confidential rehabilitation order if they determine that a violation of the standard of care was a result of the intemperate use of drugs or alcohol.



The board shall have complete discretion to determine whether any violation of the standard of care was a result of the intemperate use of drugs or alcohol.

(4) Additional factors to be established by a licensee or applicant. Licensees or applicants otherwise eligible for a rehabilitation order should provide evidence of the following factors to be considered by the board prior to the board proposing a rehabilitation order:

(A) steps taken to prevent potential future harm to the public that may include a treatment and monitoring plan;

(B) existence of rehabilitative potential;

(C) a clinical diagnosis of a physical or mental condition and supporting medical records;

(D) that the licensee or applicant cooperated with board staff during the course of the investigation; and

(E) applicability of any other mitigating factors set forth in Section 190.15(b) of this title (relating to Aggravating and Mitigating Factors).

(5) Additional factors to be established by board staff. If applicable, board staff shall present evidence of the following factors to be considered by the board prior to the board proposing a rehabilitation order:

(A) intemperate use of drugs or alcohol by the licensee or applicant in a manner affecting the standard of care;

(B) a complaint alleging intemperate use of drugs or alcohol by the licensee or applicant in a manner affecting the standard of care has been received by the board, and the status of the investigation of the complaint;

(C) licensee or applicant caused harm to any individual or entity;

(D) licensee or applicant has a disciplinary history, including criminal convictions, disciplinary orders with board or other state medical boards, disciplinary actions by other state or federal regulatory agencies, and peer review actions by hospitals or medical societies;

(E) licensee or applicant inappropriately self-treated or self-prescribed;

(F) licensee or applicant violated provisions of the Act other than §§164.051(a)(4), (a)(5) and 164.052(a)(5);

(G) applicability of any other aggravating factors set forth in Section 190.15(a) of this title (relating to Aggravating and Mitigating Factors).

(e) Concurrent public agreed order. The board may approve a public agreed order to run concurrently with any confidential rehabilitation order, authorized by this section.

(f) Requirements for self-reports. To be eligible for a rehabilitation order based on a self-report of intemperate use of drugs or alcohol:

(1) the self-report must have been made to the board:

(A) within five years after the last commission of intemperate use of drugs or alcohol;

(B) before the filing of any criminal charges involving drugs or alcohol use; and

(C) before the board receives a complaint or other report of intemperate use;

(2) the licensee or applicant making the self-report has no prior board orders based on use of drugs or alcohol;

(3) the licensee or applicant has not committed a violation of the standard of care as a result of the intemperate use of drugs or alcohol;

(4) no valid complaint with regard to the licensee or applicant based on intemperate use of drugs or alcohol in a manner affecting the standard of care has been received by the board prior to the time the licensee or applicant signs the proposed rehabilitation order. If the board receives any complaint regarding the standard of care before the licensee or applicant signs the proposed rehabilitation order, the licensee or applicant is not eligible for a rehabilitation order unless the board makes a determination that the licensee or applicant did not violate the standard of care as a result of the intemperate use of drugs or alcohol;

(5) Self-reports of intemperate use of drugs or alcohol by licensees or applicants must be made through a written statement by the licensee or applicant, or the authorized agent of the licensee or applicant, submitted to the board or board staff by mail, email, messenger, telefacsimile transmission, or hand-delivery. The self-report may be made through responses provided as part of an application for a license or writing submitted for purposes of licensure renewal.

(6) the licensee or applicant must provide a complete self-report of the intemperate use of alcohol or drugs that includes, but is not limited to, the following information:

(A) the approximate dates of intemperate use;

(B) the extent of intemperate use;

(C) the substance(s) used;

(D) the method(s) of ingestion;

(E) all history of substance abuse treatment to include approximate dates of treatment and the specific locations where treatment was received; and

(F) a description of any incident that a reasonably prudent physician would believe could result in an allegation of the physician's violation of the standard of care that occurred during the time of intemperate use or, if no violation of the standard of care has occurred, a statement that no violation of the standard of care occurred during the time of intemperate use.

(g) Guidelines for determination of a mental or physical condition.

(1) Mental condition. Absent a showing of good cause, a licensee or applicant suffering from a mental condition should provide evidence to the board, including medical records, of a clinical diagnosis by a physician or mental health care provider of a condition listed under DSM-IV.

(2) Physical condition. Absent a showing of good cause, a licensee or applicant suffering from a physical condition should provide evidence to the board, including medical records, of a clinical diagnosis by a physician.

(3) Additional factors for consideration. A licensee's or applicant's diagnosis shall be considered along with the licensee's or applicant's:

(A) current and past levels of functioning;

(B) concurrent medical disorders;

(C) complicating factors such as substance-related disorders;

- (D) compliance with treatments;
- (E) response to treatment;
- (F) prognosis; and
- (G) stage of recovery from the illness.

(4) Hearing. An informal show compliance proceeding shall be considered an evidentiary hearing for the purposes of this subsection and in accordance with §164.202 of the Act.

(h) Confidentiality. Consideration of proposed agreed rehabilitation orders shall be conducted so as to keep the identity of the licensee or applicant confidential.

(1) Confidentiality may be preserved through one or more of the following:

(A) confidential informal show compliance proceedings;

(B) confidential modification and termination requests and proceedings;

(C) executive sessions by the board and board committee; and/or,

(D) redaction of identifying information when such orders are considered in open session.

(2) The rehabilitation order may require the licensee or applicant to participate in activities or programs provided by a local or statewide private medical association. If the board makes such a requirement, the board shall:

(A) inform the association of the licensee's duties under the order, including specific guidance to enable the association to comply with any requirements necessary to assist in the physician's rehabilitation;

(B) provide to the association any information, including confidential information, that the board determines to be necessary, including a copy of the rehabilitation order; and

(C) advise the association that the information provided by the board is and remains confidential, is not subject to discovery, subpoena, or other means of legal compulsion, and may be disclosed only to the board, in accordance with Section 164.205(b), Tex. Occ. Code.

(3) The board, board staff, and agents of the board will attempt in good faith to ensure that the terms and conditions of a rehabilitation order remain confidential. However, in order to ensure compliance with a rehabilitation order, it may be necessary to disrupt the activities of a licensee or applicant and to contact the licensee or applicant, including but not limited to telephone calls, mail, or unannounced visits to the licensee's or applicant's place of employment or residence.

(4) Upon a determination by the board that licensee or applicant has violated a rehabilitation order, the rehabilitation order may become a public document and subject to the Texas Public Information Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 182. USE OF EXPERTS

### 22 TAC §§182.3 - 182.5, 182.7, 182.8

The Texas Medical Board adopts amendments to §§182.3 - 182.5, 182.7 and new §182.8, concerning Use of Experts, without changes to the proposed text as published in the November 4, 2005, issue of the *Texas Register* (30 TexReg 7139) and will not be republished.

The amendment to §182.3 conforms the rule to new statutory changes in Senate Bill 419. The amendment to §182.4 authorizes use of consultants as needed by the agency. The amendment to §182.5 sets out the composition, qualifications, length of time a person may serve on the Expert Physician Panel, and grounds for removal from the panel. The amendment to §182.7 updates references to Expert Physician Reviewers to conform to statutory changes in Senate Bill 419. New §182.8 sets out a procedure for random selection of Expert Physician Reviewers to review the standard of care in a particular disciplinary investigation, grounds for conflicts of interest, and procedures for Expert Physician Review.

The following comments from the Texas Medical Association (TMA) were received:

These rules concern the use of expert physician panel. The rules concerning the use of expert physicians have been significantly improved. The random selections of the physicians who will serve on the panel as well as the standards determining and addressing conflicts of interest have been added. These are amendments that will enhance the credibility and effectiveness of the panel. More importantly, §182.8(b) has been added. This rule states, in part, "Reviewers shall be specifically informed that they may communicate with other Reviewers selected to review that case and that they should communicate with other Reviewers to attempt to reach a consensus." This new rule helps to bring the review by the expert panel closer to a "peer review" (a contemporaneous interactive discussion among physicians with similar specialties who consider quality of care issues) with which physicians are more familiar and at times involved. The Association strongly supports this rule.

Response: Agree

The amendments and new section are adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board adopts amendments to §§187.1, 187.2, 187.4, 187.9, 187.10, 187.14 - 187.16, 187.18, 187.20, 187.21, the repeal of §187.12 and §187.17, amendments to §§187.23, 187.26 - 187.31, 187.33, the repeal of §187.32 and §187.34, amendments to §§187.36, 187.37, 187.42, 187.43, new §187.45 and an amendment to §187.56, concerning Procedural Rules, without changes to the proposed text as published in the November 4, 2005, issue of the *Texas Register* (30 TexReg 7141) and will not be republished.

The amendments to §187.1 and §187.2 change the name of Texas Medical Board and Texas Physician Assistant Board. The amendment to §187.4 includes "other proceeding of record" among proceedings that agreements must be in writing. The amendment to §187.9 sets out standards for refunds to be ordered to be paid to patients, as required by statutory change by SB 419; clarify when tolling does not apply to *locum tenens* practice. The amendment to §187.10 clarifies language regarding the purpose of informal board proceedings. The amendment to §187.14 sets out standards and procedures for a committee of Board employees to recommend dismissal or propose an agreed order in an enforcement, pursuant to authority granted by SB 419. The amendment to §187.15 requires a licensee to comply with reasonable requests to produce. The amendment to §187.16 clarifies language regarding ISCs, consolidating provisions from other sections and eliminating the provision for an ISC based on written information, which has not been used. The amendment to §187.18 requires ISC panels to be composed of two members, including one public member, and one physician in the case of a case before the Medical Board; sets out more detailed standards for consideration of requests to reschedule an ISC; requires information to be provided by a licensee at least 5 business days before the date of the ISC; clarifies the role of the Hearings Counsel; clarifies the procedure for private deliberations by the ISC panel; and clarifies and cleans up language of the rule. The amendment to §187.20 requires the Board to consider previous attempts to resolve enforcement matters when it does not approve a proposed settlement agreement and determines that further action is required. The amendment to §187.21 increases the number of ISC panelists from 1 to 2, except in certain circumstances, as required by statutory changes in SB 419. The repeal of §187.12 eliminates duplicative language regarding notice of ISC that is included in §187.16. The repeal of §187.17 eliminates the rule that provides unused procedures for ISCs based on written information. The amendment to §187.23 provides that the rules of the State Office of Administrative Hearings shall govern the procedures of contested cases, except when the Board's rules provide the Board's interpretation of the Medical Practice Act and identifies statutory authority in the Administrative Procedure Act for interim appeals. The amendment to §187.26 deletes provisions for notice by publication so that SOAH rules will apply to service of Notice of Adjudicative Hearing. The amendment to §187.27 eliminates requirements that written answer in

contested case must admit or deny allegations. The amendment to §187.28 eliminates Board procedures for discovery in contested cases, so that it is clear that SOAH Rules apply. The amendment to §187.29 clarifies language regarding mediation and eliminate conflicts with SOAH Rules. The amendment to §187.30 clarifies that contested case hearings must be recorded by a court reporter and eliminates confusion with SOAH rules. The amendment to §187.31 eliminates provision in conflict with SOAH Rules and clarify matters that deal with interpretations of Medical Practice Act. The amendment to §187.33 eliminates provisions in conflict with SOAH Rules. The repeal of §187.32 and §187.34 eliminates provisions in conflict with SOAH Rules. The amendment to §187.36 clarifies and cleans-up language regarding interlocutory appeals and certified questions. The amendment to §187.37 incorporates specific statutory language regarding the Board changing a finding of fact or conclusion of law recommended by an administrative law judge, as required by SB 419; sets out the Board's interpretation of §164.007(a), requiring the Board to determine the charges on the merits. The amendment to §187.42 clarifies standards and procedure for Board members to recuse themselves from voting on any enforcement matter. The amendment to §187.43 clarifies that petitions for modification or termination of a Board disciplinary order will be heard before an ISC panel and eliminate the unworkable requirement that petitions for modification and termination must be filed 20 days prior to a hearing, when a hearing has not been set. New §187.45 provides that any probationer may be required to appear before Board representatives to report on compliance and progress under the Board's order. The amendment to §187.56 makes a grammatical correction by changing "which" to "whom" and sets out statutory authority for telephone conference call for temporary suspensions.

The following comments were received from the Texas Medical Association (TMA):

Comment #1: Section 187.9(d) concerns the issue of refunds as part of a Board Order. TMA supports the amendment as written and believes that the board's rule accurately reflects the intent of the legislature.

Response: Agree

Comment #2: Section 187.16(a) has been amended and subsection (b) has been added. These amendments provide for the provision of information to a licensee prior to an Informal Settlement Conference. The Association supports these changes.

Response: Agree

Comment #3: Subsection 187.18(i) and (n) (as re-lettered) have been amended to comply with changes in that statute made during Sunset Review. A concern of the Association had been that employees of the board may have been able to ex-parte board representative who were making decisions at ISCs. The Board has clarified the duties and functions of the employee who participated in the hearing and the hearings council. It is appropriate that the Board representatives have legal counsel and the rule amendments help to establish a clear demarcation between the two functions.

Response: Agree

Comment #4: Section 187.31. This rule relates to evidence admitted at a State Office of Administrative Hearing. Subsections (b)(11) and (2) are amended to comply with changes to the Medical Practice Act and to not only permit the use of certain peer review information as the basis of an expert opinion but also to

protect those individuals who participated in peer review. The Association supports those changes.

Response: Agree

## **SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS**

### **22 TAC §§187.1, 187.2, 187.4, 187.9**

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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## **SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS**

### **22 TAC §§187.10, 187.14 - 187.16, 187.18, 187.20, 187.21**

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



### **22 TAC §187.12, §187.17**

The repeals are adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## **SUBCHAPTER C. FORMAL BOARD PROCEEDINGS AT SOAH**

### **22 TAC §§187.23, 187.26 - 187.31, 187.33**

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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### **22 TAC §187.32, §187.34**

The repeals are adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER D. FORMAL BOARD PROCEEDINGS

### 22 TAC §§187.36, 187.37, 187.42

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER E. PROCEEDINGS RELATING TO PROBATIONERS

### 22 TAC §187.43, §187.45

The amendment and new rule are adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER F. TEMPORARY SUSPENSION PROCEEDINGS

### 22 TAC §187.56

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 190. DISCIPLINARY GUIDELINES

The Texas Medical Board adopts amendments to §§190.8, 190.14 and 190.16, concerning Disciplinary Guidelines, without changes to the proposed text as published in the November 4, 2005, issue of the *Texas Register* (30 TexReg 7155) and will not be republished.

The amendment to §190.8 sets out rules and guidelines as necessary to comply with Chapter 53, Texas Occupations Code, as required by Senate Bill 419. The amendment to §190.14 set out standards for consideration of appropriate disciplinary action and providing that the Board will consider whether the violation relates directly to patient care or involves only an administrative penalty, as required by Senate Bill 419; adds references to statutes; provide standard sanctions for convictions for felonies and certain misdemeanors; and add detail to standard sanctions for quality of care violations. The amendment to §190.16 adds consideration of whether a violation is an administrative violation, aggravated administrative violation, or patient care violation to the considerations to determine the amount of an administrative penalty.

No comments were received regarding adoption of the rules.

## SUBCHAPTER B. VIOLATION GUIDELINES

### 22 TAC §190.8

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## SUBCHAPTER C. SANCTION GUIDELINES

## 22 TAC §190.14

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Donald W. Patrick, MD, JD

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## SUBCHAPTER D. ADMINISTRATIVE PENALTIES

### 22 TAC §190.16

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## CHAPTER 193. STANDING DELEGATION ORDERS

### 22 TAC §193.2, §193.6

The Texas Medical Board adopts amendments to §193.2 and §193.6, concerning Standing Delegation Orders, without changes to the proposed text as published in the November 4, 2005, issue of the *Texas Register* (30 TexReg 7160) and will not be republished.

The amendment to §193.2 deletes the reference to registration of delegation of prescriptive authority with the Board. The amendment to §193.6 sets out rules requiring a physician who delegates prescriptive authority to document when and to whom a

delegation is made and eliminate references to and procedures for Advisory Committee on waivers of requirements for delegation of prescriptive authority, as required by Senate Bill 419.

No comments were received regarding adoption of the rules.

The amendments are proposed under the authority of the Texas Occupations Code Annotated, §§153.001, 157.0511(b-1) and 157.0542(d-h) which provides the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Donald W. Patrick, MD, JD

Executive Director

Texas Medical Board

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## TITLE 25. HEALTH SERVICES

### PART 1. DEPARTMENT OF STATE HEALTH SERVICES

#### CHAPTER 117. END STAGE RENAL DISEASE FACILITIES

##### SUBCHAPTER B. FACILITY LICENSING

### 25 TAC §117.14

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts an amendment to §117.14, concerning end stage renal disease facilities licensing fees without changes to the proposed text as published in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6903), and the section will not be republished.

#### BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts Biennial Revenue estimate. To meet these requirements, cost recovery fees were included in this amendment.

The End Stage Renal Disease Facilities Program was evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of the program.

## SECTION-BY-SECTION SUMMARY

Amendments to §117.14 contain changes in the manner in which fees are assessed against end stage renal disease facilities for initial and renewal licenses. Specifically, §117.14(b)(1) establishes a fee system based on the number of licensed stations. This new fee structure will result in an increase in the licensing fee for some facilities, and a decrease in the licensing fee for other facilities.

## COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

## LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adopted rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

**STATUTORY AUTHORITY** The adopted amendment to §117.14 is authorized by Health and Safety Code, §12.0111 and §251.002, which require the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy Campbell

General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111



## CHAPTER 123. RESPIRATORY CARE PRACTITIONER CERTIFICATION

### 25 TAC §123.4

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts an amendment to §123.4, concerning respiratory care practitioners fees without changes to the proposed text as published in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6904), and the section will not be republished.

## BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Bi-

ennial Revenue estimate. To meet these requirements, cost recovery fees are included in this amendment.

The Respiratory Care Practitioner Certification Program was evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; and the cost of licenses compared to other similar licenses. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of each program.

## SECTION-BY-SECTION SUMMARY

Amendments to §123.4 contain increases in fees assessed against licensed respiratory care practitioners for license renewal. Specifically, §123.4(1)(C) increases the fee for a one-year renewal by \$5; and §123.4(1)(D) increases the fee for a two-year renewal by \$10. The term "renewal fee" is being inserted, and language referencing the Board of Health is being removed because the Board of Health was abolished on August 31, 2004.

## COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

## LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adopted rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

## STATUTORY AUTHORITY

The adopted amendment to §123.4 is authorized by Health and Safety Code, §12.0111 and §251.002, which require the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy Campbell

General Counsel

Department of State Health Services

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## CHAPTER 135. AMBULATORY SURGICAL CENTERS

## SUBCHAPTER A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

### 25 TAC §135.3

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts an amendment to §135.3, concerning ambulatory surgical centers licensing fees without changes to the proposed text as published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7679), and the section will not be republished.

#### BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, cost recovery fees are included in this amendment.

The Ambulatory Surgical Centers Program was evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of the program.

#### SECTION-BY-SECTION SUMMARY

Amendments to §135.3 contain increases in ambulatory surgical center licensing fees for initial and renewal applications. Specifically, §135.3(a) increases the fee for an initial license application by \$1,200; and §135.3(b) increases the fee for a renewal license application by \$1,200.

#### COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adopted rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The adopted amendments to §135.3 are authorized by Health and Safety Code, §12.0111 and §251.002, which require the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy Campbell

General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111



## CHAPTER 141. MASSAGE THERAPISTS SUBCHAPTER A. THE DEPARTMENT

### 25 TAC §141.2

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts an amendment to §141.2, concerning massage therapists fees without changes to the proposed text as published in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6907), and the section will not be republished.

#### BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, cost recovery fees are included in this amendment.

The Massage Therapy Registration Program was evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; and the cost of licenses compared to other similar licenses. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of each program.

#### SECTION-BY-SECTION SUMMARY

Amendments to §141.2 contain increases in fees assessed against licensed massage therapists for renewal registrations. Specifically, §141.2(c)(7) increases the fee for a one-year renewal by \$10; and §141.2(c)(8) increases the fee for a two-year renewal by \$20.

#### COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adopted rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The adopted amendment to §141.2 is authorized by Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human



Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy Campbell

General Counsel

Department of State Health Services

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## CHAPTER 295. OCCUPATIONAL HEALTH

### SUBCHAPTER C. TEXAS ASBESTOS HEALTH PROTECTION

#### 25 TAC §§295.42 - 295.56, 295.61

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§295.42 - 295.56 and 295.61, concerning asbestos health protection fees without changes to the proposed text as published in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6923), and the sections will not be republished.

#### BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, cost recovery fees are included in these amendments.

Programs with regulatory authority over asbestos health protection were evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; licensee's ability to pay in comparison to average salary of professionals; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of each program.

#### SECTION-BY-SECTION SUMMARY

Amendments to §§295.42 - 295.56 and 295.61 contain increases in fees for two-year registration and license terms assessed against an asbestos abatement worker, asbestos operations and maintenance contractor (restricted), asbestos operations and maintenance supervisor (restricted), asbestos abatement contractor, asbestos abatement supervisor, individual asbestos consultant, asbestos consultant agency, asbestos project manager, asbestos inspector, asbestos management planner, air monitoring technician, asbestos management planner agency, asbestos laboratory, asbestos training provider,

and asbestos transporter. Asbestos notification fees were also increased. References to one-year registration and license fees have been deleted because the program no longer issues one-year registrations and licenses. Specifically, §295.42(b) increases the asbestos abatement workers license fee by \$5, §295.43(c) increases the asbestos operations and maintenance contractor (restricted) license fee by \$20, §295.44(b) increases the asbestos operations and maintenance supervisor (restricted) license fee by \$45, §295.45(c) increases the asbestos abatement contractor license fee by \$70, §295.46(b) increases the asbestos abatement supervisor license fee by \$45, §295.47(c) increases the individual asbestos consultant license fee by \$45, §295.48(c) increases the asbestos consultant agency license fee by \$30, §295.49(b) increases the asbestos project manager license fee by \$20, §295.50(b) increases the asbestos inspector license fee by \$10, §295.51(c) increases the asbestos management planner license fee by \$20, §295.52(c) increases the air monitoring technician license fee by \$10, §295.53(d) increases the asbestos management planner agency license fee by \$30, §295.54(b) increases the asbestos laboratory license fee by \$30, §295.55(b) increases the asbestos training provider license fee by \$70, §295.56(b) increases the asbestos transporter license fee by \$30, §295.61(g)(1) increases the administrative fee by \$5; and §295.61(j)(3) increases the basis for notification fees by \$5 per asbestos reporting unit and increases the administrative fees by \$5. In addition, §295.61(j)(3) increases the maximum fee by \$210 per notification, except for schools, which have an increase of \$20 per notification.

#### COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenter was an individual presenting himself as a professional environmental training provider. The commenter was against the rules in their entirety, but did not include any recommendations for change as discussed in the summary of comments.

Comment: Concerning the fee increases in the rules, one commenter was concerned with the added burden to industry and to local employment opportunities due to the 7% overall fee increase and to the change from a one-year licensing period to a two-year licensing period.

Response: The commission disagrees with the comment, because the department has been directed to recover 100% of its regulatory costs, including indirect costs. The increased fees recover regulatory costs associated with increases in employee pay, travel reimbursement and recovery of appropriations. No change was made to the rules as a result of the comment.

Comment: Concerning the fee increases in the rules, one commenter was concerned with lower attendance levels occurring in mandatory training courses due to fewer individuals and companies entering the asbestos industry.

Response: The commission disagrees with the comment, because the department has determined that the number of examinations taken by students attending training classes and the number of licenses issued to individuals and to companies has neither significantly decreased nor increased based on the number of licensees two years ago. No change was made to the rules as a result of this comment.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adopted rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The adopted amendments to §§295.42 - 295.56 and 295.61 are authorized by Health and Safety Code, §1954.056, which requires the department to adopt a schedule of fees; Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy Campbell

General Counsel

Department of State Health Services

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## CHAPTER 448. STANDARD OF CARE

### SUBCHAPTER D. FACILITY LICENSURE INFORMATION

#### 25 TAC §448.408

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts an amendment to §448.408, concerning chemical dependency treatment facilities' licensure fees, without changes to the proposed text as published in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6926), and the section will not be republished.

#### BACKGROUND AND PURPOSE

The Texas Legislature passed the General Appropriations Act, Senate Bill 1, 79th Legislature, Regular Session (2005). Article II, Rider 85, makes a portion of the appropriation contingent upon collection of fees above the Comptroller of Public Accounts' Biennial Revenue estimate. To meet these requirements, cost recovery fees are included in this amendment.

The Chemical Dependency Treatment Facility Program was evaluated to determine the level of increase in fees based on the following criteria: the date of the last fee increase for the specific program area; the percentage of revenue above costs for the specific program; the cost of licenses compared to other similar licenses; and the value added analysis of the license. Additional costs of administration and enforcement of the program, due to a recent legislative increase in pay, longevity pay, and travel reimbursement, were also factored in to determine the direct and indirect costs of the program.

#### SECTION-BY-SECTION SUMMARY

Amendments to §448.408(c) contain increases in fees assessed against licensed chemical dependency treatment facilities for base fees, fees per residential and outpatient site, and fees per bed, and eliminate the maximum fee per facility. Specifically, the separate \$100 fee for a license application is eliminated, and renumbered §448.408(c)(1) establishes a combined base fee for a license at \$1,200, which includes application and review fees for initial and renewal licenses, increasing the net fee for licensure by \$100; renumbered §448.408(c)(2) increases the fee per residential site by \$25, and adds a fee of \$125 per outpatient site; and renumbered §448.408(c)(3) increases the fee per bed by \$5. The maximum \$4,000 fee per facility is eliminated.

#### COMMENTS

The department, on behalf of the commission, has reviewed and prepared the following responses to a comment received regarding the proposed rule during the comment period, which the commission has reviewed and accepts. The commenter was representing the Solutions Toward Addiction Recovery (STAR) Council on Substance Abuse. The commenter was opposed to any fee increase and thus was not in favor of the rule amendment.

**Comment:** The commenter opposed the increase in fees because the proposal increases the likelihood that rural outpatient sites, which serve indigent clients, rely on fixed reimbursement rates to cover costs, and already face rising costs, a reduction in payment limits, and an increased indigent demand, will be unable to absorb the additional cost of a fee increase and may be forced to close.

**Response:** The commission disagrees with the commenter. The commission understands the concern with rising costs, but disagrees that fees should remain unchanged. The department has been directed to recover 100% of its regulatory costs, including indirect costs. The increased fees recover regulatory costs associated with increases in employee pay and travel reimbursement, and allow for the recovery of appropriations. No change has been made as a result of this comment.

#### LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the adoption has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

#### STATUTORY AUTHORITY

The adopted amendment to §448.408 is authorized by Health and Safety Code, §12.0111 and §464.007, which require the department to charge fees for issuing or renewing a license; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cathy Campbell  
General Counsel  
Department of State Health Services  
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For further information, please call: (512) 458-7111



## **TITLE 28. INSURANCE**

### **PART 1. TEXAS DEPARTMENT OF INSURANCE**

#### **CHAPTER 7. CORPORATE AND FINANCIAL REGULATION**

##### **SUBCHAPTER A. EXAMINATION AND FINANCIAL ANALYSIS**

###### **28 TAC §7.9**

The Commissioner of Insurance adopts new §7.9, concerning the examination of the actuarial opinion of an insurer that is required to file an actuarial opinion with its property and casualty annual statement. The new section is adopted without changes to the proposed text as published in the October 28, 2005, issue of the *Texas Register* (30 TexReg 6999).

The new section is necessary to facilitate the examination of an actuarial opinion submitted in accordance with Insurance Code §802.002 which requires an actuarial opinion to be submitted with an insurer's annual statement. The new section will assist the department in identifying insurers requiring further analysis to determine their financial condition. Conversely, it will help the department determine which insurers do not need further examination.

The adopted section requires a domestic property and casualty insurer to submit to the department annually, on or before March 15th, an Actuarial Opinion Summary which will facilitate the examination of the actuarial opinion submitted with an insurer's annual statement as required by Insurance Code §802.002. The section further provides that the Actuarial Opinion Summary and the Actuarial Report and Workpapers be completed in accordance with the National Association of Insurance Commissioners' Annual Statement Instructions, Property and Casualty (Instructions) that are adopted annually by the department in conjunction with its adoption of the annual statement forms. The Actuarial Opinion Summary is a recapitulation of the Actuarial Report and Workpapers and will provide information on the opining actuary's point estimate and/or range of reasonable estimates, explanation of any exceptional adverse development, and other information required by the Instructions. In addition, the section provides that the commissioner may request a domestic property and casualty insurer to furnish its Actuarial Report and Workpapers and a foreign insurer to furnish its Actuarial Opinion Summary and Actuarial Report and Workpapers. Finally, the section provides that the Actuarial Opinion Summary; Actuarial Report and Workpapers; and any documents, materials or other information provided by an insurer will be used by the department to examine a company's financial condition, and, therefore, such documents will be considered information obtained during the course of an examination under Insurance Code Article 1.15,

§8(b) which provides that such information is confidential and may not be disclosed to the public.

No comments were received regarding the new section.

The new section is adopted under the Insurance Code Articles 1.15, 1.32, 21.39, 21.54 and §§802.001, 802.002, 861.254, 862.001, 883.203, 883.204, 885.401, 911.002, 911.304, 912.301, 941.252, 942.201, 982.004, 984.153, 984.202, and 36.001. Article 1.15 authorizes the Commissioner to examine each insurer doing business in this state. Article 1.32 authorizes the Commissioner to establish criteria for hazardous conditions. Article 21.39 requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing reserves applicable to each line of insurance. Section 802.001 authorizes the Commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business. Section 802.002 requires an insurance company's annual statement to include an actuarial opinion relating to the loss and loss adjustment expense reserves for property and casualty risks. Article 21.54 and §§861.254, 862.001, 883.203, 883.204, 885.401, 911.002, 911.304, 912.301, 941.252, 942.201, 982.004, 984.153, and 984.202 require insurers subject to the adopted section to file an annual statement, other financial reports and other information and provide specific rulemaking authority of the Commissioner relating to those insurers. Section 36.001 provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 6, 2006.

TRD-200600106  
Gene C. Jarmon  
General Counsel and Chief Clerk  
Texas Department of Insurance  
Effective date: January 26, 2006  
Proposal publication date: October 28, 2005  
For further information, please call: (512) 463-6327



###### **28 TAC §7.68**

The Commissioner of Insurance adopts the repeal of §7.68 concerning the 1998 annual statement and 1999 quarterly statements, other reporting forms, and diskettes necessary to report information concerning the financial condition and business operations and activities of insurers and other entities regulated by the department. The repeal of the section is adopted without changes to the proposal as published in the October 28, 2005, issue of the *Texas Register* (30 TexReg 7000).

The repeal of the section is necessary to permit the simultaneous adoption of a new §7.68 that is also published in this issue of the *Texas Register*. The new §7.68 adopts by reference the 2005 annual and quarterly statement blanks, other reporting forms, electronic data filings with the National Association of Insurance Commissioners and instructions to be used by insurers and certain other entities regulated by the Texas Department of

Insurance when reporting their financial condition and business operations and activities of the 2005 calendar year.

The repeal of the section will eliminate an obsolete section. The reporting forms adopted under the repealed section have been filed and the due dates for filing the 1998 annual statements, 1999 quarterly statements and other reports have passed; therefore, the repealed section is no longer necessary.

No comments were received.

The repeal of the section is adopted under Insurance Code §§802.001 - 802.003 and 802.051 - 802.056 and 36.001. Sections 802.001 - 802.003 and 802.051 - 802.056 authorize the commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 6, 2006.

TRD-200600105

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: January 26, 2006

Proposal publication date: October 28, 2005

For further information, please call: (512) 463-6327



## 28 TAC §7.68

The Commissioner of Insurance adopts new §7.68 concerning the adoption by reference of reporting forms, electronic data filings with the National Association of Insurance Commissioners (NAIC) and instructions to be used by insurers, health maintenance organizations (HMOs), nonprofit legal service corporations, Texas Health Insurance Risk Pool, Texas Fair Plan Association and Texas Windstorm Insurance Association. The reporting forms include the 2005 annual and quarterly statement blanks, stockholder information supplement, management discussion and analysis, supplemental compensation exhibit, overhead assessment for insurance company examination expenses, analysis of surplus, separate accounts, supplemental information for county mutuals and HMOs, release of contributions, reserve summary, inventory of insurance in force, and summary of insurance in force. The new section is adopted without changes to the proposed text as published in the October 28, 2005, issue of the *Texas Register* (30 TexReg 7000).

The new section is necessary to adopt the reporting forms and instructions to be used by insurers and certain other entities regulated by the department when reporting their financial condition, business operations, and activities during 2005 and to adopt the requirement to file such completed statement blanks and other reporting forms, including diskettes or electronic filings, with the NAIC. The information provided by the completion of the forms is necessary to allow the department to monitor the solvency,

business activities, and statutory compliance of the insurers and the other entities regulated by the department.

The new section defines terms relevant to the statement blanks and reporting forms; provides the dates by which certain reports are to be filed; adopts by reference the NAIC 2005 annual and quarterly statement blanks, other reporting forms and instructions for reporting the financial condition and business operations and activities; and requires insurance companies and other regulated entities to file such annual and quarterly statements and other reporting forms with the department and/or the NAIC as directed. Most of the forms adopted by the section have been promulgated by the NAIC and are used by other state insurance regulators. The use of these forms promotes uniformity and efficiency in the regulation of insurance companies and other entities regulated by the department. The required documents will provide financial information to the public and regulatory agencies, and will be used by the department to monitor the financial condition of insurers and other regulated entities licensed in Texas to assure financial solvency and compliance with applicable laws and accounting requirements. Subsection (a) explains the purpose of the section and adopts by reference the forms described in the section. Subsection (b) provides that the term "Texas Edition" refers to the blanks and forms promulgated by the Commissioner. Subsection (c) specifies the hierarchy of laws in the event of a conflict between the Insurance Code, this new section and other department regulations and the NAIC instructions specified in the new section. Subsections (d) - (l) describe the forms, instructions and filing requirements for the various types of insurers and other regulated entities. Subsection (m) provides that the department may request financial reports other than those specified in this section.

No comments were received.

The new section is adopted under the Insurance Code §§802.001 - 802.003 and 802.051 - 802.056, which authorize the commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business and require certain insurers to make filings with the National Association of Insurance Commissioners; Articles 21.49 and 21.54 and §§841.255, 842.003, 842.201, 842.202, 843.151, 843.155, 861.254, 861.255, 862.001, 862.003, 882.001, 882.003, 883.002, 883.204, 884.256, 885.401, 885.403 - 885.406, 887.009, 887.060, 887.401 - 887.407, 911.001, 911.304, 912.002, 912.201 - 912.203, 912.301, 941.252, 942.201, 961.002, 961.003, 961.052, 961.202, 982.004, 982.251 - 982.254, 982.004, 982.101, 982.103, 984.101 - 984.103, 984.153, 984.201, 984.202, 1506.057, 2551.001, which require the filing of financial reports and other information by insurers and other regulated entities and provide specific rulemaking authority to the Commissioner relating to those insurers and other regulated entities; §§982.001, 982.002, 982.004, 982.052, 982.102 - 982.104, 982.106, 982.108, 982.110 - 982.112, 982.201 - 982.204, 982.251 - 982.255, 982.302 - 982.306, which provide the conditions under which foreign insurers are permitted to do business in this state and require foreign insurers to comply with the provisions of the Insurance Code; §§844.001 - 844.005, 844.051 - 844.054, and 844.101, which authorize the Commissioner to adopt rules to implement the regulation of nonprofit health corporations holding a certificate of authority under Insurance Code, Title 2, Chapter 844; Article 21.39, which requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing

reserves applicable to each line of insurance; §32.041, which requires the department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements; and §36.001, which provides that the Commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 6, 2006.

TRD-200600104

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: January 26, 2006

Proposal publication date: October 28, 2005

For further information, please call: (512) 463-6327



## **TITLE 34. PUBLIC FINANCE**

### **PART 1. COMPTROLLER OF PUBLIC ACCOUNTS**

#### **CHAPTER 3. TAX ADMINISTRATION**

##### **SUBCHAPTER J. PETROLEUM PRODUCTS DELIVERY FEE**

###### **34 TAC §3.151**

The Comptroller of Public Accounts adopts an amendment to §3.151, concerning imposition, collection, and bonds or other security of the fee, without changes to the proposed text as published in the November 11, 2005, issue of the *Texas Register* (30 TexReg 7381).

The amendment is necessary to reflect the passage of Senate Bill 1863 by the 79th Legislature that abolished the portion of §26.3574 (b) (1, 2, 3, 4, and 5) that allowed the rates to decrease for FY 06 and FY 07 and amended the same section to allow the FY 04 and FY 05 rates to remain in effect through August 31, 2007.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Water Code, §26.3574.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 9, 2006.

TRD-200600113

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: January 29, 2006

Proposal publication date: November 11, 2005

For further information, please call: (512) 475-0387



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY**

#### **CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES**

##### **SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS**

###### **37 TAC §4.1**

The Texas Department of Public Safety adopts amendments to Chapter 4, Subchapter A, §4.1, concerning Regulations Governing Hazardous Materials, without changes to the proposed text as published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7692).

Amendment to §4.1 is necessary in order to ensure that the Federal Hazardous Material Regulations, incorporated by reference in the section, reflects all amendments and interpretations issued through October 1, 2005.

On December 20, 2005, the department held a public hearing to receive comment(s) from all interested person(s) regarding adoption of the amendments. No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.018, which authorizes the director to adopt all or part of the federal hazardous materials rules by reference; and Texas Transportation Code, §644.051, which authorizes the director to adopt all or part of the federal safety regulations by reference.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 4, 2006.

TRD-200600032

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Effective date: January 24, 2006

Proposal publication date: November 18, 2005

For further information, please call: (512) 424-2135



##### **SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY**

###### **37 TAC §§4.11 - 4.13, 4.16, 4.17**

The Texas Department of Public Safety adopts amendments to Chapter 4, Subchapter B, §§4.11 - 4.13, 4.16, and 4.17 concerning Regulations Governing Transportation Safety, without changes to the proposed text as published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7693).

The amendment to §4.11 is necessary in order to update the rule so that it reflects October 1, 2005 in subsection (a). The amendment is necessary to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in the section, reflect all amendments and interpretations issued through that particular date.

Amendments to §4.12 are necessary in order to implement changes made by House Bill 749 and Senate Bill 1074, as passed by the 79th Texas Legislature (Regular Session). Additional amendments to §4.12 are necessary in order to implement the requirements of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 10-59).

Amendments to §4.13 are necessary in order to implement changes made by House Bill 602, as passed by the 79th Texas Legislature (Regular Session). Additional amendments to §4.13 are necessary in order to clarify the initial certifications requirements under the North American Standard Roadside Inspection and Passenger Vehicle Inspection Courses. Changes are also being made to text of §4.13 so that it is uniform throughout the section and mirrors the Commercial Vehicle Safety Alliance (CVSA) training and certification requirements.

Amendments to §4.16 are necessary in order to clarify the difference between the subsection regarding assessment of administrative penalties from the subsection regarding payment, collection and settlement of administrative penalties. A further amendment to §4.16 is necessary in order to simplify the procedure for calculation of administrative penalties, and to eliminate language that is unnecessary because it duplicates factors built into the Federal Uniform Fine Assessment Program used to calculate administrative penalties. The amendment is further necessary to codify the department's policy for further reductions in the assessment of administrative penalties when the gross receipts of the motor carrier are less than one million dollars. The amendment to §4.16 also clarifies department procedures for the release of Impoundment Orders. Non-substantive grammatical corrections are also being made in the amendment to §4.16.

The amendment to §4.17 is necessary in order to correct an inaccuracy listed in the current rule.

On December 20, 2005, the department held a public hearing to receive comment(s) from all interested person(s) regarding adoption of the amendments. No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 4, 2006.  
TRD-200600033

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Effective date: January 24, 2006

Proposal publication date: November 18, 2005

For further information, please call: (512) 424-2135

## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 20. TEXAS WORKFORCE COMMISSION**

#### **CHAPTER 800. GENERAL ADMINISTRATION SUBCHAPTER A. GENERAL PROVISIONS**

##### **40 TAC §800.8**

The Texas Workforce Commission (Commission) adopts the following new section to Chapter 800 relating to General Administration, without changes to the proposed text as published in the October 28, 2005, issue of the *Texas Register* (30 TexReg 7031):

Subchapter A. General Provisions, §800.8

PURPOSE, BACKGROUND, AND AUTHORITY

EXPLANATION OF INDIVIDUAL PROVISIONS

PURPOSE, BACKGROUND, AND AUTHORITY

The Commission adopts a new rule relating to suspension of rules. The purpose of the rule is to allow the Commission to suspend rules in order to ensure timely and appropriate administration of the Commission's employment and training and unemployment insurance services.

In August and September 2005, two extraordinary natural disasters, Hurricanes Katrina and Rita, unexpectedly impacted Texas residents, property, and resources. Both were declared major disasters by President Bush. On September 20, 2005, the Governor of Texas certified that Hurricane Rita posed a threat of immediate disaster along the Texas Gulf Coast and authorized implementation of all necessary and appropriate public measures to respond to the threat. The disasters resulted in thousands of individuals evacuating from Louisiana to Texas, the flooding of thirteen eastern Texas counties, the complete destruction of the infrastructure of several communities, and have prevented many affected persons from receiving Agency services and left tens of thousands in need of Agency services.

The Commission believes that the imminent peril to the public health, safety, and welfare posed by the two hurricanes requires that the Commission have the flexibility to suspend specific rules that are unmistakably inapplicable or unenforceable for compliance in an urgent public emergency. The new rule allows the Commission to respond immediately and effectively to a public emergency or imperative public necessity, while continuing to provide unimpeded services.

Furthermore, the new rule provides that the Commission will suspend a rule only after it finds a public emergency or imperative public necessity, and only after the Commission finds that the suspension will best serve the public health, safety, or welfare. The Commission believes that this language is appropriate and

necessary to respond to unforeseen circumstances and emergency situations. The Commission will suspend, in open meeting, only those rules whose suspension will best serve the public health, safety, or welfare and will not suspend any rule that merely restates federal statute or regulation or state statute that is beyond the Commission's authority to suspend or defer.

#### EXPLANATION OF INDIVIDUAL PROVISIONS

##### SUBCHAPTER A. GENERAL PROVISIONS

###### §800.8. Suspension of Rules

The Commission adopts new §800.8, Suspension of Rules, which provides the Commission with the authority to suspend the operation of one or more of the provisions in this title, on either a statewide or other basis, if the Commission finds a public emergency or imperative public necessity exists, and the Commission finds that the suspension will best serve the public health, safety, or welfare.

The Commission received no comments on the proposed rule language.

The new rule is adopted pursuant to Texas Labor Code §301.0015(a)(5) and §302.002(d), which provide the Commis-

sion with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities and Texas Labor Code §301.062, which provides the Commission with the power to make findings and determine issues under Title 4 of the Texas Labor Code.

The rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 3, 2006.

TRD-200600023

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

Effective date: January 23, 2006

Proposal publication date: October 28, 2005

For further information, please call: (512) 475-0829



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

## Adopted Rule Reviews

Texas Board of Pardons and Paroles

### Title 37, Part 5

The Texas Board of Pardons and Paroles files this notice of readoption of 37 TAC Chapter 146, relating to Revocation of Parole or Mandatory Supervision, with one change. The Board amended §146.11 to clarify the procedures for submission of a releasee's motion to reopen hearing or reinstate supervision. The readoption of Chapter 146 is filed in accordance with the Board of Pardons and Paroles' Notice of Intent to Review published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5813). No public comments were received.

The assessment of Chapter 146 indicates that the original justification for the rules continues to exist; and the Board is readopting the rules in accordance with Texas Government Code, §2001.039. This concludes the review of 37 TAC Chapter 146.

TRD-200600093

Laura McElroy

General Counsel

Texas Board of Pardons and Paroles

Filed: January 6, 2006



Texas Real Estate Commission

### Title 22, Part 23

The Texas Real Estate Commission (TREC) adopts the review of Chapter 543 in accordance with the Texas Government Code, §2001.039. The proposed notice of review was published in the October 28, 2005, issue of the *Texas Register* (30 TexReg 7057).

In conjunction with this review, the agency adopted amendments to §§543.1 - 546.6 and new §§543.7 - 543.11. The amendments implement revisions to the Texas Timeshare Act, Chapter 221, Texas Property Code enacted during the 79th Legislative Session, Regular Session, by House Bill 1045 (2005); change the cites to the relevant statutory provisions in Chapter 221, Texas Property Code; and update the rules for consistency and clarity. The agency has determined that with this change, the reasons for adopting the sections in Chapter 543 continue to exist.

No comments were received in response to the notice of the proposed rule review as published in the above-referenced issue of the *Texas Register*.

This concludes the review of Chapter 543, Rules Relating to the Provisions of The Texas Timeshare Act.

TRD-200600058

Loretta R. DeHay

General Counsel

Texas Real Estate Commission

Filed: January 4, 2006





# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §20.22(a)

| Pest Mgmt Zone | Destruction Deadline                      |
|----------------|---|
| 1              | September 1                               |
| 2 - Area 1     | September 1                               |
| 2 - Area 2     | September 1                               |
| 2 - Area 3     | September 1                               |
| 2 - Area 4     | October 1                                 |
| 3 - Area 1     | October 1                                 |
| 3 - Area 2     | October 15                                |
| 4              | October 10                                |
| 5              | October 20                                |
| 6              | October 31                                |
| 7              | October 31                                |
| 8 - Area 1     | October 31                                |
| 8 - Area 2     | November 30                               |
| 9              | <u>March 1</u><br><del>[February 1]</del> |
| 10             | February 1                                |

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Department of Aging and Disability Services

### Open Solicitation #2 for Armstrong County

Administrative Code (TAC) §19.2324(c), secondary selection process, the Department of Aging and Disability Services (DADS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for **Armstrong County, County #006**. Medicaid nursing facility occupancy rates in **Armstrong County** exceeded the 90% occupancy threshold for six consecutive months during the period of **April 2005 through September 2005**. The county occupancy rates for each month of that period were: **93.1%, 93.1%, 92.3%, 91.3%, 94.2%, and 93.6%**. In accordance with the requirements contained in 40 TAC §19.2324(c), DADS will allocate up to **90** Medicaid beds to an eligible applicant that desires to construct a new nursing facility or to construct an addition to an existing nursing facility. Applicants for additional Medicaid beds must demonstrate a history of quality care as specified in 40 TAC §19.2322(e). Applicants must submit a written reply as described in 40 TAC §19.2324(c)(4) to Joe D. Armstrong, Department of Aging and Disability Services, Licensing and Credentialing Section, Regulatory Services, Mail Code E-342, P. O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by DADS before the close of business February 21, 2006, the published ending date of the open solicitation period. If one or more applicants are eligible for additional Medicaid beds, DADS will allocate Medicaid beds in accordance with 40 TAC §19.2324(c)(5). If no application for the secondary selection process is received or if no applicant meets the requirements in §19.2324(c), no further solicitation will occur.

TRD-200600125

Phoebe Knauer

General Counsel

Department of Aging and Disability Services

Filed: January 9, 2006

## Office of the Attorney General

### Child Support Guidelines - 2006 Tax Charts

Pursuant to §154.061(b) of the Texas Family Code, the Office of the Attorney General of Texas, as the Title IV-D agency, has promulgated the following tax charts for 2006 to assist courts in establishing the amount of a child support order. These tax charts are applicable to employed and self-employed persons in computing net monthly income.

#### INSTRUCTIONS FOR USE

To use these tables, first compute the obligor's annual gross income. Then recompute to determine the obligor's average monthly gross income. These tables provide a method for calculating "monthly net income" for child support purposes, subtracting from monthly gross income the social security taxes and the federal income tax withholding for a single person claiming one personal exemption and the standard deduction.

Thereafter, in many cases the guidelines call for a number of additional steps to complete the necessary calculations. For example, §§154.061 - 154.070 provide for appropriate additions to "income" as that term is defined for federal income tax purposes, and for certain subtractions from monthly net income, in order to arrive at the net resources of the obligor available for child support purposes. If necessary, one may compute an obligee's net resources using similar steps.

This agency hereby certifies that the tax charts have been received by legal counsel and found to be within the agency's authority to publish.

**SELF-EMPLOYED PERSONS  
2006 TAX CHART**

| Monthly Net Earnings<br>From<br>Self-Employment * | Social Security Taxes   |  | Federal<br>Income<br>Taxes*** | Net<br>Monthly<br>Income |
|---|---|--|-------------------------------|--------------------------|
|   | Old-Age, Survivors<br>and Disability<br>Insurance Taxes (12.4%)** | Hospital (Medicare)<br>Insurance<br>Taxes (2.9%)** |                               |                          |
| \$100.00  | \$11.45   | \$2.68   | \$0.00                        | \$85.87                  |
| \$200.00  | \$22.90   | \$5.36   | \$0.00                        | \$171.74                 |
| \$300.00  | \$34.35   | \$8.03   | \$0.00                        | \$257.62                 |
| \$400.00  | \$45.81   | \$10.71  | \$0.00                        | \$343.48                 |
| \$500.00  | \$57.26   | \$13.39  | \$0.00                        | \$429.35                 |
| \$600.00  | \$68.71   | \$16.07  | \$0.00                        | \$515.22                 |
| \$700.00  | \$80.16   | \$18.75  | \$0.00                        | \$601.09                 |
| \$800.00  | \$91.61   | \$21.43  | \$3.93                        | \$683.03                 |
| \$900.00  | \$103.06  | \$24.10  | \$13.23                       | \$759.61                 |
| \$1,000.00  | \$114.51  | \$26.78  | \$22.52                       | \$836.19                 |
| \$1,100.00  | \$125.97  | \$29.46  | \$31.81                       | \$912.76                 |
| \$1,200.00  | \$137.42  | \$32.14  | \$41.11                       | \$989.33                 |
| \$1,300.00  | \$148.87  | \$34.82  | \$50.40                       | \$1,065.91               |
| \$1,400.00  | \$160.32  | \$37.49  | \$59.69                       | \$1,142.50               |
| \$1,500.00  | \$171.77  | \$40.17  | \$72.02                       | \$1,216.04               |
| \$1,600.00  | \$183.22  | \$42.85  | \$85.96                       | \$1,287.97               |
| \$1,700.00  | \$194.67  | \$45.53  | \$99.90                       | \$1,359.90               |
| \$1,800.00  | \$206.13  | \$48.21  | \$113.84                      | \$1,431.82               |
| \$1,900.00  | \$217.58  | \$50.88  | \$127.78                      | \$1,503.76               |
| \$2,000.00  | \$229.03  | \$53.56  | \$141.72                      | \$1,575.69               |
| \$2,100.00  | \$240.48  | \$56.24  | \$155.66                      | \$1,647.62               |
| \$2,200.00  | \$251.93  | \$58.92  | \$169.60                      | \$1,719.55               |
| \$2,300.00  | \$263.38  | \$61.60  | \$183.54                      | \$1,791.48               |
| \$2,400.00  | \$274.83  | \$64.28  | \$197.48                      | \$1,863.41               |
| \$2,500.00  | \$286.29  | \$66.95  | \$211.42                      | \$1,935.34               |
| \$2,600.00  | \$297.74  | \$69.63  | \$225.36                      | \$2,007.27               |
| \$2,700.00  | \$309.19  | \$72.31  | \$239.30                      | \$2,079.20               |
| \$2,800.00  | \$320.64  | \$74.99  | \$253.24                      | \$2,151.13               |
| \$2,900.00  | \$332.09  | \$77.67  | \$267.18                      | \$2,223.06               |
| \$3,000.00  | \$343.54  | \$80.34  | \$281.13                      | \$2,294.99               |
| \$3,100.00  | \$354.99  | \$83.02  | \$295.07                      | \$2,366.92               |
| \$3,200.00  | \$366.44  | \$85.70  | \$309.01                      | \$2,438.85               |
| \$3,300.00  | \$377.90  | \$88.38  | \$322.95                      | \$2,510.77               |
| \$3,400.00  | \$389.35  | \$91.06  | \$336.89                      | \$2,582.70               |
| \$3,500.00  | \$400.80  | \$93.74  | \$350.83                      | \$2,654.63               |
| \$3,600.00  | \$412.25  | \$96.41  | \$373.50                      | \$2,717.84               |
| \$3,700.00  | \$423.70  | \$99.09  | \$396.73                      | \$2,780.48               |
| \$3,800.00  | \$435.15  | \$101.77   | \$419.97                      | \$2,843.11               |
| \$3,900.00  | \$446.60  | \$104.45   | \$443.20                      | \$2,905.75               |
| \$4,000.00  | \$458.06  | \$107.13   | \$466.43                      | \$2,968.38               |
| \$4,250.00  | \$486.68  | \$113.82   | \$524.52                      | \$3,124.98               |
| \$4,500.00  | \$515.31  | \$120.52   | \$582.60                      | \$3,281.57               |
| \$4,750.00  | \$543.94  | \$127.21   | \$640.69                      | \$3,438.16               |
| \$5,000.00  | \$572.57  | \$133.91   | \$698.77                      | \$3,594.75               |
| \$5,250.00  | \$601.20  | \$140.60   | \$756.86                      | \$3,751.34               |
| \$5,500.00  | \$629.83  | \$147.30   | \$814.94                      | \$3,907.93               |
| \$5,750.00  | \$658.46  | \$153.99   | \$873.03                      | \$4,064.52               |
| \$6,000.00  | \$687.08  | \$160.69   | \$931.11                      | \$4,221.12               |
| \$6,250.00  | \$715.71  | \$167.38   | \$989.20                      | \$4,377.71               |
| \$6,500.00  | \$744.34  | \$174.08   | \$1,047.28                    | \$4,534.30               |
| \$6,750.00  | \$772.97  | \$180.78   | \$1,105.36                    | \$4,690.89               |
| \$7,000.00  | \$801.60  | \$187.47   | \$1,163.45                    | \$4,847.48               |
| \$7,500.00  | \$858.86  | \$200.86   | \$1,282.10                    | \$5,158.18               |
| \$8,000.00  | \$916.11  | \$214.25   | \$1,412.21                    | \$5,457.43               |
| \$8,500.00  | \$973.37  | \$227.64   | \$1,542.32                    | \$5,756.67               |
| \$8,849.16*****                                   | \$973.40****  | \$236.99   | \$1,638.77                    | \$6,000.00               |
| \$9,000.00  | \$973.40  | \$241.03   | \$1,680.44                    | \$6,105.13               |
| \$9,500.00  | \$973.40  | \$254.42   | \$1,818.56                    | \$6,453.62               |
| \$10,000.00                                       | \$973.40  | \$267.82   | \$1,956.69                    | \$6,802.09               |
| \$10,500.00                                       | \$973.40  | \$281.21   | \$2,094.81                    | \$7,150.58               |
| \$11,000.00                                       | \$973.40  | \$294.60   | \$2,232.94                    | \$7,499.06               |
| \$11,500.00                                       | \$973.40  | \$307.99   | \$2,371.06                    | \$7,847.55               |
| \$12,000.00                                       | \$973.40  | \$321.38   | \$2,509.19                    | \$8,196.03               |
| \$12,500.00                                       | \$973.40  | \$334.77   | \$2,647.31                    | \$8,544.52               |
| \$13,000.00                                       | \$973.40  | \$348.16   | \$2,785.44                    | \$8,893.00               |
| \$13,500.00                                       | \$973.40  | \$361.55   | \$2,925.62                    | \$9,239.43               |
| \$14,000.00                                       | \$973.40  | \$374.94   | \$3,065.80                    | \$9,585.86               |
| \$14,500.00                                       | \$973.40  | \$388.33   | \$3,219.03                    | \$9,919.24               |
| \$15,000.00                                       | \$973.40  | \$401.72   | \$3,384.25                    | \$10,240.63              |

### **Footnotes to Self-Employed Persons 2006 Tax Chart:**

\* Determined without regard to Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C.) (the "Code").

\*\* In calculating each of the Old-Age, Survivors and Disability Insurance tax and the Hospital (Medicare) Insurance tax, net earnings from self-employment are reduced by the deduction under Section 1402(a)(12) of the Code. The deduction under Section 1402(a)(12) of the Code is equal to net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) multiplied by one-half (1/2) of the sum of the Old-Age, Survivors and Disability Insurance tax rate (12.4%) and the Hospital (Medicare) Insurance tax rate (2.9%). The sum of these rates is 15.3% (12.4% + 2.9% = 15.3%). One-half (1/2) of the combined rate is 7.65% (15.3% x 1/2 = 7.65%). The deduction can be computed by multiplying the net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) by 92.35%. This gives the same deduction as multiplying the net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) by 7.65% and then subtracting the result.

For example, the Social Security taxes imposed on monthly net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) of \$2,500.00 are calculated as follows:

(i) Old-Age, Survivors and Disability Insurance Taxes:

$$\$2,500.00 \times 92.35\% \times 12.4\% = \$286.29$$

(ii) Hospital (Medicare) Insurance Taxes:

$$\$2,500.00 \times 92.35\% \times 2.9\% = \$66.95$$

\*\*\* These amounts represent one-twelfth (1/12) of the annual Federal income tax calculated for a single taxpayer claiming one personal exemption (\$3,300.00, subject to reduction in certain cases, as described below in this footnote) and taking the standard deduction (\$5,150.00).

In calculating the annual Federal income tax, gross income is reduced by the deduction under Section 164(f) of the Code. The deduction under Section 164(f) of the Code is equal to one-half (1/2) of the self-employment taxes imposed by Section 1401 of the Code for the taxable year. For example, monthly net earnings from self-employment of \$15,000.00 times 12 months equals \$180,000.00. The Old-Age, Survivors and Disability Insurance taxes imposed by Section 1401 of the Code for the taxable year equal \$11,680.80 (\$94,200.00 x 12.4% = \$11,680.80). The Hospital (Medicare) Insurance taxes imposed by Section 1401 of the Code for the taxable year equal \$4,820.67 (\$180,000.00 x .9235 x 2.9% = \$4,820.67). The sum of the taxes imposed by Section 1401 of the Code for the taxable year equals \$16,501.47 (\$11,680.80 + \$4,820.67 = \$16,501.47). The deduction under Section 164(f) of the Code is equal to one-half (1/2) of \$16,501.47 or \$8,250.74.

For a single taxpayer with an adjusted gross income in excess of \$150,500.00, the deduction for the personal exemption is reduced by two-thirds (2/3) of two percent (2%) for each \$2,500.00 or fraction thereof by which adjusted gross income exceeds \$150,500.00. The deduction for the personal exemption is no longer reduced for adjusted

gross income in excess of \$273,000.00. For example, monthly net earnings from self-employment of \$15,000.00 times 12 months equals \$180,000.00. The \$180,000.00 amount is reduced by \$8,250.74 (i.e., the deduction under Section 164(f) of the Code -- see the immediately preceding paragraph of this footnote for the computation) to arrive at adjusted gross income of \$171,749.26. The excess over \$150,500.00 is \$21,249.26. \$21,249.26 divided by \$2,500.00 equals 8.50. The 8.50 amount is rounded up to 9. The reduction percentage is 12% ( $2/3 \times 2\% \times 9 = 12\%$ ). The \$3,300.00 deduction for one personal exemption is reduced by \$396.00 ( $\$3,300.00 \times 12\% = \$396.00$ ) to \$2,904.00 ( $\$3,300.00 - \$396.00 = \$2,904.00$ ). For adjusted gross income in excess of \$273,000.00 the deduction for the personal exemption is \$1,100.00.

\*\*\*\* For annual net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) above \$94,200.00, this amount represents a monthly average of the Old-Age, Survivors and Disability Insurance tax based on the 2006 maximum Old-Age, Survivors and Disability Insurance tax of \$11,680.80 per person (12.4% of the first \$94,200.00 of net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) equals \$11,680.80). One-twelfth (1/12) of \$11,680.80 equals \$973.40.

\*\*\*\*\* This amount represents the point where the monthly net earnings from self-employment of a self-employed individual would result in \$6,000.00 of net resources.

\* \* \* \* \*

### **References Relating to Self-Employed Persons 2006 Tax Chart:**

#### **1. Old-Age, Survivors and Disability Insurance Tax**

##### **(a) Contribution Base**

- (1) Social Security Administration's notice dated October 18, 2005, and appearing in 70 Fed. Reg. 61,677 (October 25, 2005)
- (2) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1402(b))
- (3) Section 230 of the Social Security Act, as amended (42 U.S.C. §430)

##### **(b) Tax Rate**

- (1) Section 1401(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1401(a))

##### **(c) Deduction Under Section 1402(a)(12)**

- (1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1402(a)(12))

2. Hospital (Medicare) Insurance Tax

(a) Contribution Base

- (1) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1402(b))
- (2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, §13207, 107 Stat. 312, 467-69 (1993)

(b) Tax Rate

- (1) Section 1401(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1401(b))

(c) Deduction Under Section 1402(a)(12)

- (1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1402(a)(12))

3. Federal Income Tax

(a) Tax Rate Schedule for 2006 for Single Taxpayers

- (1) Revenue Procedure 2005-70, Section 3.01, Table 3 which appears in Internal Revenue Bulletin 2005-47, dated November 21, 2005
- (2) Section 1(c), (f) and (i) of the Internal Revenue Code of 1986, as (26 U.S.C. §1(c), 1(f), 1(i))

(b) Standard Deduction

- (1) Revenue Procedure 2005-70, Section 3.10(1), which appears in Internal Revenue Bulletin 2005-47, dated November 21, 2005
- (2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §63(c))

(c) Personal Exemption

- (1) Revenue Procedure 2005-70, Section 3.17, which appears in Internal Revenue Bulletin 2005-47, dated November 21, 2005
- (2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §151(d))

(d) Deduction Under Section 164(f)

- (1) Section 164(f) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §164(f))

| EMPLOYED PERSONS<br>2006 TAX CHART |   |  |                           |                       |
|------------------------------------|---|--|---------------------------|-----------------------|
| Social Security Taxes              |   |  |                           |                       |
| Monthly<br>Gross Wages             | Old-Age, Survivors<br>and Disability<br>Insurance Taxes (6.2%)* | Hospital (Medicare)<br>Insurance<br>Taxes (1.45%)* | Federal Income<br>Taxes** | Net Monthly<br>Income |
| \$100.00                           | \$6.20  | \$1.45   | \$0.00                    | \$92.35               |
| \$200.00                           | \$12.40   | \$2.90   | \$0.00                    | \$184.70              |
| \$300.00                           | \$18.60   | \$4.35   | \$0.00                    | \$277.05              |
| \$400.00                           | \$24.80   | \$5.80   | \$0.00                    | \$369.40              |
| \$500.00                           | \$31.00   | \$7.25   | \$0.00                    | \$461.75              |
| \$600.00                           | \$37.20   | \$8.70   | \$0.00                    | \$554.10              |
| \$700.00                           | \$43.40   | \$10.15  | \$0.00                    | \$646.45              |
| \$800.00                           | \$49.60   | \$11.60  | \$9.58                    | \$729.22              |
| \$892.67***                        | \$55.35   | \$12.94  | \$18.85                   | \$805.53              |
| \$900.00                           | \$55.80   | \$13.05  | \$19.58                   | \$811.57              |
| \$1,000.00                         | \$62.00   | \$14.50  | \$29.58                   | \$893.92              |
| \$1,100.00                         | \$68.20   | \$15.95  | \$39.58                   | \$976.27              |
| \$1,200.00                         | \$74.40   | \$17.40  | \$49.58                   | \$1,058.62            |
| \$1,300.00                         | \$80.60   | \$18.85  | \$59.58                   | \$1,140.97            |
| \$1,400.00                         | \$86.80   | \$20.30  | \$72.92                   | \$1,219.98            |
| \$1,500.00                         | \$93.00   | \$21.75  | \$87.92                   | \$1,297.33            |
| \$1,600.00                         | \$99.20   | \$23.20  | \$102.92                  | \$1,374.68            |
| \$1,700.00                         | \$105.40  | \$24.65  | \$117.92                  | \$1,452.03            |
| \$1,800.00                         | \$111.60  | \$26.10  | \$132.92                  | \$1,529.38            |
| \$1,900.00                         | \$117.80  | \$27.55  | \$147.92                  | \$1,606.73            |
| \$2,000.00                         | \$124.00  | \$29.00  | \$162.92                  | \$1,684.08            |
| \$2,100.00                         | \$130.20  | \$30.45  | \$177.92                  | \$1,761.43            |
| \$2,200.00                         | \$136.40  | \$31.90  | \$192.92                  | \$1,838.78            |
| \$2,300.00                         | \$142.60  | \$33.35  | \$207.92                  | \$1,916.13            |
| \$2,400.00                         | \$148.80  | \$34.80  | \$222.92                  | \$1,993.48            |
| \$2,500.00                         | \$155.00  | \$36.25  | \$237.92                  | \$2,070.83            |
| \$2,600.00                         | \$161.20  | \$37.70  | \$252.92                  | \$2,148.18            |
| \$2,700.00                         | \$167.40  | \$39.15  | \$267.92                  | \$2,225.53            |
| \$2,800.00                         | \$173.60  | \$40.60  | \$282.92                  | \$2,302.88            |
| \$2,900.00                         | \$179.80  | \$42.05  | \$297.92                  | \$2,380.23            |
| \$3,000.00                         | \$186.00  | \$43.50  | \$312.92                  | \$2,457.58            |
| \$3,100.00                         | \$192.20  | \$44.95  | \$327.92                  | \$2,534.93            |
| \$3,200.00                         | \$198.40  | \$46.40  | \$342.92                  | \$2,612.28            |
| \$3,300.00                         | \$204.60  | \$47.85  | \$362.08                  | \$2,685.47            |
| \$3,400.00                         | \$210.80  | \$49.30  | \$387.08                  | \$2,752.82            |
| \$3,500.00                         | \$217.00  | \$50.75  | \$412.08                  | \$2,820.17            |
| \$3,600.00                         | \$223.20  | \$52.20  | \$437.08                  | \$2,887.52            |
| \$3,700.00                         | \$229.40  | \$53.65  | \$462.08                  | \$2,954.87            |
| \$3,800.00                         | \$235.60  | \$55.10  | \$487.08                  | \$3,022.22            |
| \$3,900.00                         | \$241.80  | \$56.55  | \$512.08                  | \$3,089.57            |
| \$4,000.00                         | \$248.00  | \$58.00  | \$537.08                  | \$3,156.92            |
| \$4,250.00                         | \$263.50  | \$61.63  | \$599.58                  | \$3,325.29            |
| \$4,500.00                         | \$279.00  | \$65.25  | \$662.08                  | \$3,493.67            |
| \$4,750.00                         | \$294.50  | \$68.88  | \$724.58                  | \$3,662.04            |
| \$5,000.00                         | \$310.00  | \$72.50  | \$787.08                  | \$3,830.42            |
| \$5,250.00                         | \$325.50  | \$76.13  | \$849.58                  | \$3,998.79            |
| \$5,500.00                         | \$341.00  | \$79.75  | \$912.08                  | \$4,167.17            |
| \$5,750.00                         | \$356.50  | \$83.38  | \$974.58                  | \$4,335.54            |
| \$6,000.00                         | \$372.00  | \$87.00  | \$1,037.08                | \$4,503.92            |
| \$6,250.00                         | \$387.50  | \$90.63  | \$1,099.58                | \$4,672.29            |
| \$6,500.00                         | \$403.00  | \$94.25  | \$1,162.08                | \$4,840.67            |
| \$6,750.00                         | \$418.50  | \$97.88  | \$1,224.58                | \$5,009.04            |
| \$7,000.00                         | \$434.00  | \$101.50   | \$1,290.46                | \$5,174.04            |
| \$7,500.00                         | \$465.00  | \$108.75   | \$1,430.46                | \$5,495.79            |
| \$8,000.00                         | \$486.70****  | \$116.00   | \$1,570.46                | \$5,826.84            |
| \$8,245.44*****                    | \$486.70  | \$119.56   | \$1,639.18                | \$6,000.00            |
| \$8,500.00                         | \$486.70  | \$123.25   | \$1,710.46                | \$6,179.59            |
| \$9,000.00                         | \$486.70  | \$130.50   | \$1,850.46                | \$6,532.34            |
| \$9,500.00                         | \$486.70  | \$137.75   | \$1,990.46                | \$6,885.09            |
| \$10,000.00                        | \$486.70  | \$145.00   | \$2,130.46                | \$7,237.84            |
| \$10,500.00                        | \$486.70  | \$152.25   | \$2,270.46                | \$7,590.59            |
| \$11,000.00                        | \$486.70  | \$159.50   | \$2,410.46                | \$7,943.34            |
| \$11,500.00                        | \$486.70  | \$166.75   | \$2,550.46                | \$8,296.09            |
| \$12,000.00                        | \$486.70  | \$174.00   | \$2,690.46                | \$8,648.84            |
| \$12,500.00                        | \$486.70  | \$181.25   | \$2,830.46                | \$9,001.59            |
| \$13,000.00                        | \$486.70  | \$188.50   | \$2,973.54                | \$9,351.26            |
| \$13,500.00                        | \$486.70  | \$195.75   | \$3,115.59                | \$9,701.96            |
| \$14,000.00                        | \$486.70  | \$203.00   | \$3,278.72                | \$10,031.58           |
| \$14,500.00                        | \$486.70  | \$210.25   | \$3,447.35                | \$10,355.70           |
| \$15,000.00                        | \$486.70  | \$217.50   | \$3,614.77                | \$10,681.03           |

### **Footnotes to Employed Persons 2006 Tax Chart:**

\* An employed person not subject to the Old-Age, Survivors and Disability Insurance/Hospital (Medicare) Insurance taxes will be allowed the reductions reflected in these columns, unless it is shown that such person has no similar contributory plan such as teacher retirement, federal railroad retirement, federal civil service retirement, etc.

\*\* These amounts represent one-twelfth (1/12) of the annual Federal income tax calculated for a single taxpayer claiming one personal exemption (\$3,300.00, subject to reduction in certain cases, as described in the next paragraph of this footnote) and taking the standard deduction (\$5,150.00).

For a single taxpayer with an adjusted gross income in excess of \$150,500.00, the deduction for the personal exemption is reduced by two-thirds (2/3) of two percent (2%) for each \$2,500.00 or fraction thereof by which adjusted gross income exceeds \$150,500.00. The deduction for the personal exemption is no longer reduced for adjusted gross income in excess of \$273,000.00. For example, monthly gross wages of \$15,000.00 times 12 months equals \$180,000.00. The excess over \$150,500.00 is \$29,500.00. \$29,500.00 divided by \$2,500.00 equals 11.80. The 11.80 amount is rounded up to 12. The reduction percentage is 16.00% ( $2/3 \times 2\% \times 12 = 16.00\%$ ). The \$3,300.00 deduction for one personal exemption is reduced by \$528.00 ( $\$3,300.00 \times 16.00\% = \$528.00$ ) to \$2,772.00 ( $\$3,300.00 - \$528.00 = \$2,772.00$ ). For adjusted gross income in excess of \$273,000.00 the deduction for the personal exemption is \$1,100.00.

\*\*\* The amount represents one-twelfth (1/12) of the gross income of an individual earning the federal minimum wage (\$5.15 per hour) for a 40 hour week for a full year. \$5.15 per hour x 40 hours per week x 52 weeks per year equals \$10,712.00 per year. One-twelfth (1/12) of \$10,712.00 equals \$892.67.

\*\*\*\* For annual gross wages above \$94,200.00, this amount represents a monthly average of the Old-Age, Survivors and Disability Insurance tax based on the 2006 maximum Old-Age, Survivors and Disability Insurance tax of \$5,840.40 per person (6.2% of the first \$94,200.00 of annual gross wages equals \$5,840.40). One-twelfth (1/12) of \$5,840.40 equals \$486.70.

\*\*\*\*\* This amount represents the point where the monthly gross wages of an employed individual would result in \$6,000.00 of net resources.

\* \* \* \* \*

### **References Relating to Employed Persons 2006 Tax Chart:**

#### **1. Old-Age, Survivors and Disability Insurance Tax**

##### **(a) Contribution Base**

- (1) Social Security Administration's notice dated October 18, 2005, and appearing in 70 Fed. Reg. 61,677 (October 25, 2005)
- (2) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §3121(a))
- (3) Section 230 of the Social Security Act, as amended (42 U.S.C. §430)



(b) Tax Rate

- (1) Section 3101(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §3101(a))

2. Hospital (Medicare) Insurance Tax

(a) Contribution Base

- (1) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §3121(a))
- (2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, §13207, 107 Stat. 312, 467-69 (1993)

(b) Tax Rate

- (1) Section 3101(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §3101(b))

3. Federal Income Tax

(a) Tax Rate Schedule for 2006 for Single Taxpayers

- (1) Revenue Procedure 2005-70, Section 3.01, Table 3 which appears in Internal Revenue Bulletin 2005-47, dated November 21, 2005
- (2) Section 1(c), (f) and (i) of the Internal Revenue Code of 1986, as (26 U.S.C. §1(c), 1(f), 1(i))

(b) Standard Deduction

- (1) Revenue Procedure 2005-70, Section 3.10(1), which appears in Internal Revenue Bulletin 2005-47, dated November 21, 2005
- (2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §63(c))

(c) Personal Exemption

- (1) Revenue Procedure 2005-70, Section 3.17, which appears in Internal Revenue Bulletin 2005-47, dated November 21, 2005
- (2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §151(d))

Stacey Schiff  
Deputy Attorney General  
Office of the Attorney General  
Filed: January 9, 2006



### Texas Water Code Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under Texas Water Code, §7.110. Before the State may settle a judicial enforcement action under Chapter 7 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: ***Harris County, Texas & State of Texas v. Gulf Transportation, Inc., Mystic Transport, Inc., et al., Cause no. 2003-22111, in the 80th District Court of Harris County, Texas.***

Nature of Defendant's Operations: Defendants operate two truck transport business locations in Harris County, Texas. Harris County's petition alleges that from 2001 to 2005, Defendants stored hazardous wastes and petroleum products on site in a manner that violates regulations issued by the Texas Commission on Environmental Quality. Violations included unlabeled drums of waste and leaking drums. Plaintiffs allege that on multiple occasions, Defendants discharged industrial waste, including hazardous waste, into roadside ditches that wound up in bodies of water. Harris County further alleges violations of Harris County's Storm Water Regulations.

Proposed Agreed Judgment: The proposed agreed judgment contains a permanent injunction, civil penalties, and attorney's fees. In the proposed settlement, Defendants agree to pay a civil penalty of \$135,000 to be divided evenly between Harris County and the State. Civil penalties of \$75,000 are deferred pending 5 years of compliance with the proposed injunction. The proposed judgment awards attorney's fees of \$10,000 to Harris County and \$5,000 to the State. Defendants are jointly and severally liable for monetary awards in the judgment.

For a complete description of the proposed settlement, the complete proposed Amended Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Burgess Jackson, Assistant Attorney General, Office of the Texas Attorney General, P. O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

*For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.*

TRD-200600095  
Stacey Schiff  
Deputy Attorney General  
Office of the Attorney General  
Filed: January 6, 2006



### Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of December 30, 2005 through January 5, 2006. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on January 11, 2006. The public comment period for these projects will close at 5:00 p.m. on February 10, 2006.

#### FEDERAL AGENCY ACTIONS:

**Applicant: East Beach Project Phase III, Ltd.;** Location: The project is located south of East Beach Road, immediately west of the Galvestonian Condominiums, and immediately east of the Palisade Palms Condominium Phase I and II (under construction), in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Galveston, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 329814; Northing: 3244262. Project Description: The applicant proposes to place fill into five coastal dune swale wetlands adjacent to the Gulf of Mexico, totaling 0.36 acre, for the purpose of constructing a multi-level condominium facility on a 16-acre tract. The proposed project will result in a total discharge of approximately 597.6 cubic yards of permanent fill. The wetland acreage for the project area was verified by the U. S. Army Corps of Engineers (Corps), Galveston District, on 29 March 2005 (Corps file number D-17055). For mitigation, the applicant proposes to construct a 0.72-acre coastal dune swale wetland located within a 7.6-acre area between the Gulf of Mexico and the Palisade Palms Condominium Phases I & II (under construction) and the proposed Palisades Palms Phases III & IV. CCC Project No.: 06-0110-F1; Type of Application: U.S.A.C.E. permit application #23934 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: Davis Gulf Coast, Inc.;** Location: The project is located in San Antonio Bay, State Tract (ST) 120, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Panther Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 724065; Northing: 3123129. Project Description: The applicant proposes to drill ST 120 Well No. 1 and install, operate and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. These activities include the installation of a well pad measuring 240 feet by 100 feet by 3 feet and containing approximately 2,667 cubic yards of material, a marine barge rig, a 70 by 70-foot production platform, and a 7 by 30-foot well protector. CCC Project No.: 06-0116-F1; Type of Application: U.S.A.C.E. permit application #24035 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Railroad Commission under §401 of the Clean Water Act.

**Applicant: Brazos River Harbor Navigation District;** Location: The project is located immediately north of the Brazos River Harbor and approximately 1,000 feet southeast of the Terminal Street and East 2nd Street intersection, in Freeport, Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled:

Freeport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 272772; Northing: 3203795. The three proposed Dredged Material Placement Areas (DMPA's) can be located on the U.S.G.S. quadrangle map entitled: Freeport, Texas. Approximate UTM Coordinates in NAD 27 (meters): DMPA Number 85 is at Zone 15; Easting: 271334; Northing: 3200758. DMPA Number 1 is at Zone 15; Easting: 269114; Northing: 3203318. DMPA Number 2-3 is at Zone 15; Easting: 272878; Northing: 3201556. Project Description: The project purpose is to provide a multipurpose and heavy lift cargo dock. The applicant proposes to construct a wharf for docking cargo ships, construct 2 mooring dolphins and 4 protection dolphins, excavate the existing bank to construct the wharf, dredge a berthing area and approach channel, and relocate an existing barge staging area. The dredged material is proposed to be placed in active DMPA's. The material excavated from the existing bank is proposed to be discharged on site. Additionally, the applicant proposes to build a bulkhead and an associated access road; construct a parking, loading, and unloading area; construct a foot bridge across the Velasco Drainage Ditch Channel; and install a revetment along the newly excavated bank. Furthermore, the applicant proposes to modify an existing levee; relocate an existing temporary staging area for barges; and clear and fill approximately 107 total acres, which includes 2.32 acres of adjacent wetlands. The impacts associated with this proposed project will result in the placement of 290,000 cubic yards of fill into approximately 2.32 acres of jurisdictional wetlands adjacent to the Brazos River; dredging of an approximate 21-acre area within the Brazos River; and excavation of approximately 11 acres of property above the ordinary high water mark (OHWM) of the Brazos River, including approximately 0.24 acre of jurisdictional wetlands. Approximately 972,500 cubic yards of material will be hydraulically dredged from the Brazos River and approximately 289,000 cubic yards of material will be excavated from areas above the OHWM of the Brazos River. Portions of the 107-acre site are currently permitted as a DMPA under Department of the Army Permit 21960, which expires on 31 December 2005. A wetland delineation has been conducted for the 107-acre site; however, it has not been verified by the U.S. Army Corps of Engineers (Corps). A mitigation plan was not submitted with the applicant's proposal. CCC Project No.: 06-0117-F1; Type of Application: U.S.A.C.E. permit application #23793 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

**Applicant: Sabine Investment Company;** Location: The project is located along the Victoria Barge Canal, in Guadalupe Bay, at the intersection of State Highway (SH) 185 and SH 238, approximately 1.2 miles from the city limits of Seadrift, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Seadrift, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 721033; Northing: 3147906. Project Description: The applicant proposes to place fill into 1 acre of a tidal ditch, excavate 4.63 acres of wetlands, and excavate 1.31 acres of waters of the U.S. during the construction of a residential canal subdivision. The development tract is approximately 474 acres in size. The project would comprise 589 lots with 154 acres of salt water canals. The canals are designed to have a minimum bottom width of 100 feet and would be excavated to minus 6 feet mean sea level. The subdivision would require the installation of approximately 58,000 feet of bulkhead. The applicant would excavate two entrance channels from the Victoria Barge Canal into the subdivision. A public marina would be constructed, and each canal lot would have a recessed boat slip. There would also be five locations for day slips within the canal area. All mechanically excavated material

would be placed on the subject property to elevate the land for the construction of the streets and lots. Approximately 4.5 million cubic yards of clay material would be excavated from the uplands of the property. CCC Project No.: 06-0119-F1; Type of Application: U.S.A.C.E. permit application #24012 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P. O. Box 12873, Austin, Texas 78711-2873, or [tammy.brooks@glo.state.tx.us](mailto:tammy.brooks@glo.state.tx.us). Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200600124

Larry L. Laine

Chief Clerk/Deputy Land Commissioner

Coastal Coordination Council

Filed: January 9, 2006

## Comptroller of Public Accounts

### Notice of Contract Award

Pursuant to Chapter 403 and Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the following contract awards:

The notice of request for proposals (RFP #175a) was published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6802).

The contractors will provide pooled consulting services to assist Comptroller in conducting Local Government Management Reviews of selected cities and counties statewide.

Four contracts were awarded as follows:

1. Donna Foley, CPA, 2121 Market Street, Suite 205, Galveston, Texas 77554. The total amount of all contracts awarded is not to exceed \$100,000.00. The term of the contract is January 7, 2006 through December 31, 2006;
2. MGT of America, Inc., 502 East 11th Street, Suite 205, Austin, Texas 78701. The total amount of all contracts awarded is not to exceed \$100,000.00. The term of the contract is January 9, 2006 through December 31, 2006;
3. Jerry D. Williams, CPA, 20711 Henry Avenue, Lago Vista, Texas 78645. The total amount of all contracts awarded is not to exceed \$100,000.00. The term of the contract is January 9, 2006 through December 31, 2006; and
4. Wedgewood Consulting Group, Inc., 9900 Corporate Campus Drive, Suite 3000, Louisville, Kentucky 40223.

The total amount of all contracts awarded is not to exceed \$100,000.00. The term of the contract is January 9, 2006 through December 31, 2006.

TRD-200600146

Pamela Smith  
Deputy General Counsel, Contracts  
Comptroller of Public Accounts  
Filed: January 10, 2006

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**Office of Consumer Credit Commissioner**

**Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009 of the Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/09/06 - 01/15/06 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/09/06 - 01/15/06 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-200600063  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: January 5, 2006

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**Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/16/06 - 01/22/06 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup> credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/16/06 - 01/22/06 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment, or other similar purpose.

TRD-200600126  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: January 10, 2006

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**Deep East Texas Council of Governments**

**Request for Proposal for Gateway Switch Technology**

I. The Deep East Texas Council of Governments (DETCOG) is accepting bids for a gateway switching device that fits the context of the definition of communications interoperability which is as follows: A communications interconnect system that allows telephones, cell phones, radios on different frequencies, proprietary formats, trunked talk groups, and conventional radio networks to communicate with each other using interface modules. The interconnect system can allow for several two-way and conference calls to occur simultaneously. There is no need for a dispatcher to connect one system to another system as the cross-connection operations are unmanned. This can result

in a much greater interoperability between equipment and organizations.

**II. Obtaining Full Request for Proposal (RFP) and Submission Information:**

The full RFP can be obtained at <http://www.detcog.org> or <http://txregionalcouncil.org> or by contacting:

Bobbie Stott, Purchasing Agent

Phone: (409) 384-5704, ext. 245

Fax: (409) 384-5390

E-mail: [bstott@detcog.org](mailto:bstott@detcog.org)

Submission is due to DETCOG no later than 3:00 PM on February 17, 2006.

TRD-200600147  
Walter G. Diggles, Sr.  
Executive Director  
Deep East Texas Council of Governments  
Filed: January 10, 2006

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**Request for Proposal for VHF Radio Communications System**

The Deep East Texas Council of Governments (DETCOG) is releasing this Request for Proposal (RFP) to solicit proposals from qualified vendors to acquire a new VHF radio communications system. The intent of these specifications is to define the quality of the equipment and software capable of delivering the desired performance with high reliability. The successful RFP respondent will be expected to provide hardware and software and installation of the products and services they provide as well as general consultation to provide solutions to changing needs and future expansion.

**Obtaining Full RFP and Submission Information:**

The full RFP can be obtained at <http://www.detcog.org> or <http://txregionalcouncil.org> or by contacting Bobbie Stott, Purchasing Agent, telephone: (409) 384-5704 extension 245, fax: (409) 384-5390, e-mail: [bstott@detcog.org](mailto:bstott@detcog.org).

Submission is due to DETCOG no later than 3:00 PM on February 17, 2006.

TRD-200600145  
Walter G. Diggles, Sr.  
Executive Director  
Deep East Texas Council of Governments  
Filed: January 10, 2006

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**Texas Education Agency**

**Request for Reading Assessments for Progress Monitoring in Kindergarten, Grade 1, Grade 2, and Grade 3 for 2006 - 2007**

Description. The Texas Education Agency (TEA) is notifying publishers that reading progress monitoring assessments may be submitted for review for the 2006 - 2007 *List of Recommended Reading Assessments for Progress Monitoring in Kindergarten, Grade 1, Grade 2, and Grade 3*. P.L. 107-110, Title I, Part B, Subpart 1 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001, CFDA #84.357, authorizes the TEA to develop a list of recommended assessments to measure growth and development of reading skills of students who are at risk of reading difficulties, including dyslexia, through immediate direct systematic instructional in-

tervention to strengthen reading skills and comprehension throughout the school year.

The reading progress monitoring instruments that will be placed on the list must be based on scientific research, evaluate individual student reading progress, and be used to identify students at risk for dyslexia or other reading difficulties. The recommended list of reading progress monitoring assessments must also provide evaluation of the reading skill and comprehension development of students participating in programs under Texas Education Code, Chapter 29, Subchapter B (relating to Bilingual Education and Special Language Programs).

**Program Requirements.** The 2006 - 2007 *List of Recommended Reading Assessments for Progress Monitoring in Kindergarten, Grade 1, Grade 2, and Grade 3* will remain in effect through both the 2006 - 2007 and the 2007 - 2008 school years. Once an instrument is selected for the *List of Recommended Reading Assessments for Progress Monitoring in Kindergarten, Grade 1, Grade 2, and Grade 3*, it will remain on the list for two years unless the publisher decides to submit an updated version of the instrument. Then the instrument must be resubmitted to undergo the review process.

**Publishers of progress monitoring instruments** that were selected for the 2005 - 2006 *List of Recommended Reading Assessments for Progress Monitoring in Kindergarten, Grade 1, Grade 2, and Grade 3* do not need to resubmit items that are currently on the list unless they want a new version of that instrument to be considered by the review panel of reading experts.

**Selection Criteria.** Publishers will be responsible for submitting tests that they wish to be reviewed for consideration for inclusion on the 2006 - 2007 *List of Recommended Reading Assessments for Progress Monitoring in Kindergarten, Grade 1, Grade 2, and Grade 3*. All tests submitted for review must be based on scientific research and must meet the state criteria for reliability and validity. Publishers of instruments currently on the 2005 - 2006 *List of Recommended Reading Assessments for Progress Monitoring in Kindergarten, Grade 1, Grade 2, and Grade 3* need not reapply unless their instruments have been revised and they want the new edition of that instrument to be considered for inclusion on the 2006 - 2007 list. Other publishers desiring to be included on the list will be evaluated in terms of validity, reliability, cost-effectiveness, and ease of administration/implementation by the classroom teacher. Reading instruments (English and Spanish) submitted for review must address all of the following core components of early reading instruction: (1) phonological/phonemic awareness; (2) phonics/word recognition; (3) fluency; (4) text comprehension; and (5) vocabulary, as appropriate for Kindergarten, Grade 1, Grade 2, and Grade 3.

Proposals must be submitted to Dr. David Francis; Texas Institute for Measurement, Evaluation, and Statistics; University of Houston; 100 TLCC Annex; Houston, Texas 77204-6022 by 5:00 p.m. (Central Time), Friday, February 17, 2006, to be considered for inclusion on the 2006 - 2007 *List of Recommended Reading Assessments for Progress Monitoring in Kindergarten, Grade 1, Grade 2, and Grade 3*. A detailed list of the contents of each box submitted must be included on or attached to the packing slip.

TRD-200600162

Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency  
Filed: January 11, 2006

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**Texas Commission on Environmental Quality**

## Correction of Error

The Texas Commission on Environmental Quality adopted amendments to Chapter 101, §§101.1, 101.201, 101.211, and 101.221 - 101.223 in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8884). The rule adoption as submitted by the commission had several errors which are corrected as follows.

### PREAMBLE CORRECTIONS:

1. Under SECTION BY SECTION DISCUSSION, page 8892, first column, second paragraph, "if the" should be omitted from the last sentence. The last sentence should read ". . . the reported event or activity meets the applicable affirmative defense criteria."

2. Under RESPONSE TO COMMENTS, page 8917, second column, first line, the word "evaluate" should be omitted. The sentence should read ". . . commission will develop a process that may allow for timely submission of confidential . . . ."

### RULE LANGUAGE CORRECTIONS:

1. Page 8942, 2nd column, §101.1(62), the word "regulations" should be omitted from line three of §101.1(62). Section 101.1(62) should read: "The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state rules) emissions reduction . . . ."

2. Page 8944, first and second columns, §101.1(89)(A)(i)(III)(-a-), (-c-), and (-w-), the references to "(70)(E)(i) and (iii)" are incorrect and should be replaced with "(71)(E)(i) and (iii)." Section 101.1(89)(A)(i)(III)(-a-), (-c-), and (-w-) should read: ". . . paragraph (71)(E)(i) and (iii) of this section . . . ."

3. Page 8945, first column, §101.1(89)(A)(i)(III)(-pp-) and (-zz-), the references to "(70)(E)(i) and (iii)" are incorrect and should be replaced with "(71)(E)(i) and (iii)." Section 101.1(89)(A)(i)(III)(-pp-) and (-zz-) should read: ". . . paragraph (71)(E)(i) and (iii) of this section . . . ."

4. Page 8945, first column, §101.1(89)(A)(ii): The words ", 100 pounds;" were omitted at the end of the clause. Section 101.1(89)(A)(ii) should read: "if not listed in clause (i) of this subparagraph, 100 pounds;"

5. Page 8947, second column, §101.201(a)(2)(B): The final word "exists" should be deleted from the first sentence of subparagraph (B). The first sentence in §101.201(a)(2)(B) should read: ". . . the commission Regulated Entity Number of the regulated entity experiencing an emissions event, if a Regulated Entity Number exists, or if there is not a Regulated Entity Number, the air account number of the regulated entity."

6. Page 8947, second column, §101.201(a)(3)(B): The final word "exists" should be deleted from the first sentence of subparagraph (B). The first sentence in §101.201(a)(3)(B) should read: ". . . the commission Regulated Entity Number of the regulated entity experiencing an emissions event, if a Regulated Entity Number exists, or if there is not a Regulated Entity Number, the air account number of the regulated entity."

7. Page 8948, first column, §101.201(b)(1)(B): The final word "exists" should be deleted from the first sentence of subparagraph (B). The first sentence in §101.201(b)(1)(B) should read: "the commission Regulated Entity Number of the regulated entity experiencing an emissions event, if a Regulated Entity Number and air account number exists, or if there is not a Regulated Entity Number, the air account number of the regulated entity."

8. Page 8948, second column, §101.201(b)(2)(D): The word "area" should be deleted in the second line of subparagraph (D). Section 101.201(b)(2)(D) should read: "the common name of the process

units or areas, the common name and the agency-established facility identification . . . ."

9. Page 8950, second column, §101.211(a): The word "are" was omitted in the third sentence (line 16) of subsection (a). Section 101.211(a) should read: ". . . the activity are either upsets or unplanned maintenance, startup, or shutdown . . . ."

10. Page 8954, second column, §101.222(c): The word "maintenance," and a comma after the word "startup" were omitted from the first and second sentences in §101.222(c). Section 101.222(c) should read: "Unplanned maintenance, startup, or shutdown activity. Emissions from an unplanned maintenance, startup, or shutdown activity that are determined not to be excessive are subject to an affirmative defense to all claims in . . . ."

11. Page 8954, second column, §101.222(c)(1): The phrase "(relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements)" was omitted at the end of the first sentence. The first sentence in §101.222(c)(1) should read: "for a scheduled maintenance, startup, or shutdown activity, the owner or operator complies with the requirements of §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements)."

12. Page 8955, first column, §101.222(c)(2): The words "any unplanned maintenance, startup, or shutdown" were omitted from paragraph (2). Section 101.222(c)(2) should read: "the periods of unauthorized emissions from any unplanned maintenance, startup, or shutdown activity could not have been prevented through planning and design;"

13. Page 8955, first column §101.222(c)(3): The words "any unplanned maintenance, startup, or shutdown" were omitted from paragraph (3). Section 101.222(c)(3) should read: "the unauthorized emissions from any unplanned maintenance, startup, or shutdown activity were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;"

14. Page 8955, first column §101.222(c)(4): The words "any unplanned maintenance, startup, or shutdown" were omitted. Section 101.222(c)(4) should read: "if the unauthorized emissions from any unplanned maintenance, startup, or shutdown activity were caused by a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;"

15. Page 8955, first column, §101.222(c)(6): The word "maintenance," and a comma after the word "startup" were omitted from paragraph (6). Section 101.222(c)(6) should read: "the frequency and duration of operation in an unplanned maintenance, startup, or shutdown mode resulting in unauthorized emissions were minimized and all possible steps were taken to minimize the impact of the unauthorized emissions on ambient air quality;"

16. Page 8955, first column, §101.222(c)(8): The words "any unplanned maintenance, startup, or shutdown" were omitted. Section 101.222(c)(8) should read: "the owner or operator actions during the period of unauthorized emissions from any unplanned maintenance, startup, or shutdown activity were documented by contemporaneous operating logs or other relevant evidence; and"

17. Page 8955, second column, §101.222(e): The word "maintenance," and a comma after the word "startup" were omitted from the first and second sentences in §101.222(e). Section 101.222(e) should read: "Opacity events resulting from unplanned maintenance, startup, or shutdown activity. Excess opacity events, or other opacity events where there was no emissions event, that result from an unplanned maintenance, startup, or shutdown activity that are . . . ."

TRD-200600123

## Notice of District Petition

Notices mailed January 4 through January 5, 2006

TCEQ Internal Control No. 11022005-D03; New Sweden MPC, L.P., et al (Petitioners) filed a petition for creation of New Sweden Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owners of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, City National Bank of Taylor, Texas, by joinder, through Bernard A. Mokry Inc., on the property to be included in the proposed District, and the Petitioners have provided the TCEQ with a certificate evidencing the lien holder's consent to the creation of the proposed District; (3) the proposed District will contain approximately 419.4 acres located in Travis County, Texas; and (4) no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for municipal, domestic, industrial and commercial purposes; (2) acquire, construct, operate and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$63,490,000.

TCEQ Internal Control No. 11282005-D02; County Line Water Supply Corporation (Petitioner) has filed a petition with the Texas Commission on Environmental Quality (TCEQ) to convert County Line Water Supply Corporation to County Line Special Utility District (District) and to transfer Certificate of Convenience and Necessity (CCN) No. 10292 from County Line Water Supply Corporation to County Line Special Utility District. County Line Special Utility District's business address will be: 140 Grist Mill Road; Uhland, Texas 78640-9365. The petition was filed pursuant to Chapters 13 and 65 of the Texas Water Code; 30 Texas Administrative Code Chapters 291 and 293; and the procedural rules of the TCEQ. The nature and purpose of the petition are for the conversion of County Line Water Supply Corporation and the organization, creation and establishment of County Line Special Utility District under the provisions of Article XVI, Section 59, Texas Constitution, and Chapter 65 of the Texas Water Code, as amended. The District shall have the purposes and powers provided in Chapter 65 of the Texas Water Code, and CCN No. 10292 shall be transferred as provided in Chapter 13, of the Texas Water Code, as amended. The nature of the services presently performed by County Line Water Supply Corporation is to purchase, own, hold, lease and otherwise acquire sources of water supply; to build, operate and maintain facilities for the transportation of water; and to sell water to individual members, towns, cities, private businesses, and other political subdivisions of the State. The nature of the services proposed to be provided by County Line Special Utility District is to purchase, own, hold, lease, and otherwise acquire sources of water supply; to build, operate, and maintain facilities for the storage, treatment, and transportation of water; and to sell water to individuals, towns, cities, private business entities and

other political subdivisions of the State. Additionally, it is proposed that the District will protect, preserve and restore the purity and sanitary condition of the water within the District. It is anticipated that conversion will have no adverse effects on the rates and services provided to the customers. The proposed District is located in Hays and Caldwell Counties and will contain approximately 33.3 square miles. The territory to be included within the proposed District includes all of the singularly certified service area covered by CCN No. 10292. CCN No. 10292 will be transferred after a positive confirmation election.

#### INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at 1-512-239-4691. Si desea información en Español, puede llamar al 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200600159

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 11, 2006



#### Notice of Water Quality Applications

The following notices were issued during the period of January 3, 2006 through January 10, 2006.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

THE ADELPHI ORGANIZATION AND ADELPHI COMMUNITY COOPERATIVE has applied for a renewal of TPDES Permit No. 12227-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located on an unnamed county road, approximately one

mile east of State Highway 34, and approximately five miles south of the City of Quinlan in Hunt County, Texas.

HARRIS COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO. 70 has applied for a major amendment to TPDES Permit No. WQ0010530001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 175,000 gallons per day to a daily average flow not to exceed 225,000 gallons per day. The facility is located approximately 1 mile west of the intersection of Foley Road and Hannah Nash Road, approximately 3 miles north of the City of Crosby in Harris County, Texas.

CITY OF KIRBYVILLE has applied for a renewal of TPDES Permit No. WQ0014384001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 930,000 gallons per day. The facility is located located approximately 3/4 mile east of the intersection of U.S. Highway 96 and Main Street in the City of Kirbyville in Jasper County, Texas.

LAND DEVELOPMENT COMPANY, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014641001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility will be located approximately 2,600 feet west of State Highway 288 and 2,550 feet north of County Road 58 in Brazoria County, Texas.

CITY OF MARLIN has applied for a renewal of TPDES Permit No. 10110-003, which authorizes the discharge of filter backwash effluent from a water treatment plant at a daily average flow not to exceed 170,000 gallons per day. The facility is located 1.7 miles from the intersection of Farm-to-Market Road 147 and Highway 6, immediately south of the dam for the New Marlin City Lake in Falls County, Texas.

CITY OF MOUNT PLEASANT has applied for a renewal of TPDES Permit No. 10575-004, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,910,000 gallons per day application also includes a request for a temporary variance to the existing water quality standards for Copper. The variance would authorize a three-year period in which to conduct a water quality study of the unnamed tributary where it joins Hart Creek, in Segment No. 0404 of the Cypress Creek Basin into which the treated domestic wastewater is discharged. The study would show whether a site-specific amendment to water quality standards is justified. Prior to the expiration of the three-year variance period, the Commission will consider the site-specific standards and determine whether to adopt the standards or require the existing water quality standards to remain in effect. The facility is located approximately 5,000 feet east of U.S. Highway 271 and approximately 11,000 feet north of the crossing of U.S. Highway 271 and Big Cypress Creek in Titus County, Texas.

CITY OF NOME for a major amendment to TPDES Permit No. 11564-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 150,000 gallons per day to a daily average flow not to exceed 250,000 gallons per day. The facility is located adjacent to Cotton Creek and at the intersection of 3rd Street and Cotton Creek, and approximately 0.5 mile north of the City of Nome in Jefferson County, Texas.

CITY OF RIO GRANDE has applied for a renewal of TPDES Permit No. WQ0010802001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located on the north bank of the Rio Grande, approximately 0.5 mile upstream of the International Bridge (Farm-to-Market Road 755) on the Old Fort Ringgold Site east of Rio Grande City in Starr County, Texas.

TRD-200600161

LaDonna Castañuela  
Chief Clerk  
Texas Commission on Environmental Quality  
Filed: January 11, 2006



## Notice of Water Rights Application

Notice issued January 10, 2006:

APPLICATION NO. 4649B; TXU Generation Company LP, Energy Plaza, 1601 Bryan Street, Dallas, Texas 75201-3411, Applicant, seeks an amendment to Certificate of Adjudication No. 05-4649 pursuant to 11.122 Texas Water Code (TWC) and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Certificate of Adjudication No. 05-4649 authorizes the owner, with a priority date of July 19, 1971, to maintain an existing dam and reservoir (Martin Lake) on Martin Creek, tributary of the Sabine River, Sabine River Basin, in Panola and Rusk Counties and to impound therein not to exceed 56,500 acre-feet of water. Owner is also authorized to divert and consumptively use not to exceed 25,000 acre-feet of water per year from the reservoir for industrial (power generation) purposes. Multiple Special Conditions exist. Pursuant to a water supply agreement with the City of Dallas and the Sabine River Authority, Applicant seeks to amend Certificate of Adjudication No. 05-4649 to authorize the use of the bed and banks of Martin Lake (on Martin Creek) to convey a maximum of 17,000 acre-feet of contract water per year to the authorized diversion point on Martin Lake. The contract water will be released from Lake Fork in Wood County as authorized by Certificate of Adjudication No. 05-4669 and conveyed downstream to a point on the south bank of the Sabine River located at Latitude 32.3697 N, Longitude 94.4583 W, in Panola County. A maximum of 17,000 acre-feet of water per year, less carriage losses, will be diverted from the Sabine River at a rate of not to exceed 40 cfs (18,000 gpm) and conveyed approximately 7 miles via pipeline to Martin Lake. The water will be discharged into the Lake at a point located at Latitude 32.2684 N, Longitude 94.5364 W, at a maximum rate of 40 cfs (18,000 gpm) for subsequent diversion and use as authorized by Certificate of Adjudication No. 05-4649. Pursuant to an Assignment of Water Rights dated December 14, 2001, and effective January 1, 2002, TXU Electric Company (formerly known as Texas Utilities Electric Company, the successor by merger to Dallas Power & Light Company, Texas Power & Light Company, and Texas Electric Service Company) conveyed all of its rights, title and interest to its real property in Rusk County (Martin Lake) to TXU Generation Company LP, a Texas Limited Partnership. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application and fees were received on December 16, 2005, and additional information was received on December 20 and 22, 2005, and January 2, 2006. The application was declared administratively complete and filed with the Office of the Chief Clerk on January 9, 2006. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by February 10, 2006.

## INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name

and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200600160

LaDonna Castañuela  
Chief Clerk

Texas Commission on Environmental Quality  
Filed: January 11, 2006



## Office of the Governor

### Request for Grant Applications (RFA) for the Juvenile Accountability Block Grant (JABG) Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting statewide discretionary applications for projects that promote greater accountability in the juvenile justice system for the federal fiscal year 2007 grant cycle.

**Purpose:** The purpose of the JABG Program is to reduce juvenile offending through accountability-based programs focused on the juvenile offender and the juvenile justice system.

**Available Funding:** Federal funding is authorized under the Omnibus Crime Control and Safe Streets Act of 2002, Public Law 107-273, 42 U.S.C. 3796 et seq., as amended. All grants awarded from this fund must comply with the requirements contained therein.

**Funding Levels:** No minimum or maximum funding levels.

**Required Match:** Grantees, other than Native American Tribes, must provide matching funds of at least ten percent (10%) of total project expenditures. Native American Tribes must provide a five percent (5%) match. This requirement must be met through cash contributions.

**Standards:** Grantees must comply with the standards applicable to this funding source contained in the Texas Administrative Code, Title 1, Part 1, Chapter 3, and the statutes, regulations, and guidelines applicable to this funding. In addition grantees must comply with federal regulations contained in 28 C.F.R. §95.

**Prohibitions:** Grant funds may not be used to support the following services, activities, and costs:

- (1) proselytizing or sectarian worship;
- (2) lobbying;
- (3) legal services for adult offenders;



(4) any portion of the salary of, or any other compensation for, an elected or appointed government official, except in the case of a juvenile court or drug court;

(5) overtime pay;

(6) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;

(7) vehicles or equipment for government agencies that are for general agency use;

(8) weapons, ammunition, explosives or military vehicles;

(9) admission fees or tickets to any amusement park, recreational activity or sporting event;

(10) promotional gifts;

(11) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;

(12) membership dues for individuals;

(13) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (i.e., supplanting);

(14) fundraising;

(15) medical services; and

(16) construction.

Eligible Applicants:

(1) State agencies;

(2) Units of local government including crime control and prevention districts;

(3) Nonprofit corporations; and

(4) Native American Tribal Governments.

Requirements:

(1) Projects must address one or more of the following JABG Purpose Areas:

(a) Juvenile Drug Courts

(b) Information Sharing

(c) School Safety

(2) In addition, all juvenile justice projects must address at least one of the following priorities:

(a) Family Stability. Programs or other initiatives designed to strengthen family support systems in an effort to positively impact the lives of youth and divert them from a path of serious, violent, or chronic delinquency.

(b) Substance Abuse Early Intervention and Prevention. Programs or other initiatives designed to address the use and abuse of illegal and other prescription and nonprescription drugs and the use and abuse of alcohol. Programs, research, or other initiatives include control, prevention, and treatment.

(c) Education. Programs or other initiatives designed to prevent truancy, suspension, and expulsion. School safety programs may include support for school resource officers and law-related education.

(d) Disproportionate Minority Contact (DMC). Programs or other initiatives designed to address the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.

(e) Justice System Impact. Programs or other initiatives designed to impact offender accountability and/or improve the practices, policies, or procedures within the juvenile justice system.

(f) Gang Prevention. Programs or other initiatives designed to address issues related to juvenile gang activity, including prevention and intervention efforts directed at reducing gang-related activities.

(g) Rural Access. Programs or other initiatives designed to provide prevention, intervention, and treatment services located outside a metropolitan area.

(h) Training. Programs or other initiatives designed to offer specialized training for staff working directly with at-risk youth or juvenile offenders that can positively impact the quality of the services, staff turnover rates, and program stability.

Project Period: Grand-funded projects must begin on or after August 1, 2006, and will expire on or before July 31, 2007.

Application Process: Eligible applicants can download an application kit from the Office of the Governor's website located at <http://www.governor.state.tx.us/divisions/cjd/formsapps/view>.

Preferences: Preference will be given to those applicants that demonstrate cost effective programs focused on proven or promising approaches to services provision.

Closing Date for Receipt of Applications: All applications must be submitted electronically to the Office of the Governor, Criminal Justice Division, via email at [cjdapps@governor.state.tx.us](mailto:cjdapps@governor.state.tx.us) on or before March 18, 2006.

Selection Process: For state discretionary projects, applications are reviewed by CJD staff members or a review group selected by the executive director. CJD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost effectiveness.

Contact Person: If additional information is needed, contact Lori Melcher at [lmelcher@governor.state.tx.us](mailto:lmelcher@governor.state.tx.us) or (512) 463-1919.

TRD-200600171

David Zimmerman

Assistant General Counsel

Office of the Governor

Filed: January 11, 2006

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**Department of State Health Services**

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

**NEW LICENSES ISSUED:**

| Location      | Name                            | License # | City          | Amend-ment # | Date of Action |
|---------------|---------------------------------|-----------|---------------|--------------|----------------|
| Wichita Falls | Kell West Regional Hospital LLC | L05943    | Wichita Falls | 00           | 12/29/05       |

**AMENDMENTS TO EXISTING LICENSES ISSUED:**

| Location        | Name   | License # | City            | Amend-ment # | Date of Action |
|-----------------|--|-----------|-----------------|--------------|----------------|
| Abilene         | Texas Oncology PA<br>DBA Texas Cancer Center Abilene                                 | L05127    | Abilene         | 09           | 12/29/05       |
| Addison         | Mobile Diagnostic Systems Inc<br>DBA Diagnostic Health Services                      | L03212    | Addison         | 29           | 12/28/05       |
| Alice           | Christus Spohn Health System Corporation<br>DBA Christus Spohn Hospital Alice        | L02390    | Alice           | 38           | 12/29/05       |
| Angleton        | Angleton Danbury Hospital District<br>DBA Angleton Danbury Medical Center            | L02544    | Angleton        | 32           | 12/23/05       |
| Aransas Pass    | North Bay General Hospital<br>DBA North Bay Hospital                                 | L03446    | Aransas Pass    | 32           | 12/29/05       |
| Arlington       | Metroplex Hematology Oncology Associates<br>DBA Arlington Cancer Center              | L03211    | Arlington       | 75           | 12/21/05       |
| Austin          | Austin Heart PA  | L04623    | Austin          | 33           | 12/23/05       |
| Austin          | Austin Nuclear Pharmacy Inc  | L05591    | Austin          | 05           | 12/19/05       |
| Austin          | Austin Radiological Association  | L00545    | Austin          | 115          | 12/20/05       |
| Austin          | Austin Radiological Association  | L00545    | Austin          | 116          | 12/21/05       |
| Austin          | Austin Radiological Association  | L00545    | Austin          | 117          | 12/29/05       |
| Austin          | Eye Physicians of Austin PA  | L00570    | Austin          | 19           | 12/22/05       |
| Austin          | St David's Healthcare Partnership LP LLP<br>DBA North Austin Medical Center          | L04910    | Austin          | 56           | 12/28/05       |
| Austin          | The University of Texas at Austin<br>Environmental Health & Safety                   | L00485    | Austin          | 72           | 12/22/05       |
| Baytown         | Lanxess Corporation  | L05810    | Baytown         | 02           | 12/20/05       |
| Baytown         | San Jacinto Methodist Hospital   | L02388    | Baytown         | 42           | 12/22/05       |
| Beaumont        | Metalforms Inc   | L02261    | Beaumont        | 34           | 12/28/05       |
| Bedford         | Metroplex Surgicare Partners LTD   | L05764    | Bedford         | 01           | 12/20/05       |
| Bowie           | Bowie Hospital Authority<br>DBA Bowie Memorial Hospital                              | L02327    | Bowie           | 16           | 12/29/05       |
| Cleburne        | Johns Manville International Inc   | L01482    | Cleburne        | 17           | 12/21/05       |
| College Station | College Station Hospital LP<br>DBA College Station Medical Center                    | L02559    | College Station | 60           | 12/23/05       |
| Conroe          | CHCA Conroe LP<br>DBA Conroe Regional Medical Center                                 | L01769    | Conroe          | 64           | 12/22/05       |
| Conroe          | River Pointe Heart & Vascular Center   | L05728    | Conroe          | 04           | 12/22/05       |
| Conroe          | Sadler Clinic  | L04899    | Conroe          | 20           | 12/20/05       |
| Corpus Christi  | AEP Texas Central Company<br>Nueces Bay Power Station - CTS Central Lab              | L03043    | Corpus Christi  | 10           | 12/30/05       |
| Corpus Christi  | Flint Hills Resources LP   | L00322    | Corpus Christi  | 37           | 12/22/05       |
| Corpus Christi  | Sherwin Alumina Company  | L00200    | Corpus Christi  | 43           | 12/21/05       |
| Dallas          | Bristol-Myers Squibb Medical Imaging Inc<br>DBA Bristol-Myers Squibb Medical Imaging | L02481    | Dallas          | 26           | 12/23/05       |
| Dallas          | Presbyterian Hospital of Dallas  | L01586    | Dallas          | 86           | 12/22/05       |
| Deer Park       | Equistar Chemicals LP  | L00204    | Deer Park       | 60           | 12/21/05       |
| Del Rio         | Val Verde Regional Medical Center  | L01967    | Del Rio         | 27           | 12/23/05       |
| Denison         | Texoma Medical Center  | L01624    | Denison         | 58           | 12/21/05       |

## AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

| Location    | Name  | License # | City        | Amendment # | Date of Action |
|-------------|---|-----------|-------------|-------------|----------------|
| Denton      | Texas Oncology PA<br>DBA Texas Cancer Center Denton                                 | L05815    | Denton      | 04          | 12/30/05       |
| Denton      | Trace Radiochemicals Inc  | L05435    | Denton      | 09          | 12/29/05       |
| El Paso     | El Paso Eye Surgeons PA   | L01954    | El Paso     | 09          | 12/29/05       |
| El Paso     | EP Premier Medical Group PA<br>DBA Premier Diagnostic Center                        | L05198    | El Paso     | 06          | 12/28/05       |
| El Paso     | Tenet Hospitals Limited<br>DBA Sierra Medical Center                                | L02365    | El Paso     | 58          | 12/29/05       |
| El Paso     | The University of Texas at El Paso<br>Radiation Safety Office                       | L00159    | El Paso     | 50          | 12/21/05       |
| Fort Worth  | Fort Worth Heart PA   | L05480    | Fort Worth  | 17          | 12/20/05       |
| Fort Worth  | John Peter Smith Hospital   | L02208    | Fort Worth  | 55          | 12/28/05       |
| Fort Worth  | John Peter Smith Hospital   | L02208    | Fort Worth  | 56          | 12/29/05       |
| Fort Worth  | Oncology Hematology Consultants PA<br>DBA The Center for Cancer and Blood Disorders | L05919    | Fort Worth  | 01          | 12/29/05       |
| Fort Worth  | Physician Reliance LP<br>DBA Texas Oncology at Klabzuba                             | L05545    | Fort Worth  | 12          | 12/20/05       |
| Fort Worth  | Physician Reliance LP<br>DBA Texas Oncology at Klabzuba                             | L05545    | Fort Worth  | 13          | 12/22/05       |
| Freeport    | BASF Corporation  | L01021    | Freeport    | 49          | 12/21/05       |
| Gainesville | Gainesville Hospital District<br>DBA North Texas Medical Center                     | L02585    | Gainesville | 27          | 12/23/05       |
| Garland     | Baylor Medical Center at Garland  | L01565    | Garland     | 38          | 12/21/05       |
| Garland     | Baylor Medical Center at Garland  | L02398    | Garland     | 12          | 12/29/05       |
| Hallsville  | Southwestern Electric Power Company   | L03297    | Hallsville  | 16          | 12/30/05       |
| Hillsboro   | NHCI of Hillsboro Inc<br>DBA Hill Regional Hospital                                 | L01949    | Hillsboro   | 33          | 12/23/05       |
| Houston     | Atomic Energy Industrial Laboratories of the Southwest                              | L01067    | Houston     | 27          | 12/21/05       |
| Houston     | Baylor College of Medicine<br>Office of Environmental Safety                        | L00680    | Houston     | 89          | 12/22/05       |
| Houston     | Cardinal Health   | L01911    | Houston     | 128         | 12/20/05       |
| Houston     | CHCA West Houston LP<br>DBA West Houston Medical Center                             | L05808    | Houston     | 07          | 12/19/05       |
| Houston     | Gulf Coast Cancer Center  | L05185    | Houston     | 08          | 12/21/05       |
| Houston     | Houston Northwest Radiotherapy Center   | L02416    | Houston     | 29          | 12/29/05       |
| Houston     | Medi Physics Inc  | L05517    | Houston     | 09          | 12/30/05       |
| Houston     | Park Plaza Hospital   | L02071    | Houston     | 51          | 12/28/05       |
| Houston     | Park Plaza Hospital   | L02071    | Houston     | 52          | 12/29/05       |
| Houston     | The Methodist Hospital  | L00457    | Houston     | 139         | 12/28/05       |
| Houston     | Yong Yongqi MD PA<br>DBA The Heart Clinic   | L05820    | Houston     | 01          | 12/19/05       |
| Humble      | Madaiah Revana MD PA<br>DBA Humble Cardiology Associates & Pacemaker Clinic         | L03263    | Humble      | 07          | 12/28/05       |
| Humble      | Northeast Hospital Authority<br>DBA Northeast Medical Center Hospital               | L02412    | Humble      | 58          | 12/28/05       |
| Irving      | Baylor Medical Center at Irving<br>DBA Irving Healthcare System                     | L02444    | Irving      | 61          | 12/20/05       |
| Irving      | Columbia Medical Center of Las Colinas Inc<br>DBA Las Colinas Medical Center        | L05084    | Irving      | 10          | 12/21/05       |
| Kingsville  | Texas A&M University Kingsville   | L01821    | Kingsville  | 32          | 12/23/05       |
| La Porte    | Clean Harbors Deer Park LP  | L02870    | La Porte    | 24          | 12/30/05       |
| Laredo      | Laredo Texas Hospital Company LP<br>DBA Laredo Medical Center                       | L01306    | Laredo      | 51          | 12/21/05       |

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

| Location      | Name  | License # | City          | Amendment # | Date of Action |
|---------------|---|-----------|---------------|-------------|----------------|
| Longview      | Good Shepherd Medical Center                                    | L02411    | Longview      | 73          | 12/27/05       |
| Longview      | Good Shepherd Medical Center                                    | L02411    | Longview      | 74          | 12/29/05       |
| Longview      | King Tool Company   | L05142    | Longview      | 06          | 12/20/05       |
| McAllen       | Columbia Rio Grande Regional Hospital                           | L03288    | McAllen       | 42          | 12/19/05       |
| McAllen       | McAllen Hospitals LP<br>DBA McAllen Medical Center              | L01713    | McAllen       | 71          | 12/19/05       |
| McAllen       | Valley Nuclear Incorporated                                     | L04521    | McAllen       | 22          | 12/22/05       |
| McKinney      | Cardiac Center of Texas PA                                      | L05744    | McKinney      | 06          | 12/30/05       |
| McKinney      | Complete Heart Care PA  | L05935    | McKinney      | 01          | 12/22/05       |
| Nacogdoches   | Nacogdoches Medical Center                                      | L02853    | Nacogdoches   | 37          | 12/19/05       |
| New Braunfels | Indutronics Inc   | L035454   | New Braunfels | 11          | 12/29/05       |
| Odessa        | Cemex Cement of Texas LP<br>Odessa Cement Plant                 | L00118    | Odessa        | 24          | 12/20/05       |
| Odessa        | Environmental Lab of Texas Inc                                  | L05499    | Odessa        | 03          | 12/20/05       |
| Odessa        | Huntsman Polymers Corporation                                   | L00547    | Odessa        | 40          | 12/21/05       |
| Olney         | Olney Hamilton Hospital District<br>DBA Hamilton Hospital       | L03226    | Olney         | 15          | 12/28/05       |
| Orange        | Tin Inc<br>DBA Temple Inland                                    | L01029    | Orange        | 53          | 12/21/05       |
| Pasadena      | Basell USA Inc  | L01854    | Pasadena      | 33          | 12/23/05       |
| Pasadena      | Celenese LTD<br>Clear Lake Plant                                | L01130    | Pasadena      | 64          | 12/21/05       |
| Pasadena      | Chevron Phillips Chemical Company LP                            | L00230    | Pasadena      | 76          | 12/21/05       |
| Pasadena      | Pasadena Refining System Inc                                    | L01344    | Pasadena      | 27          | 12/21/05       |
| Pasadena      | Syngenta Crop Protection Inc                                    | L02216    | Pasadena      | 29          | 12/23/05       |
| Plano         | Dallas Cardiology Associates<br>DBA Heartplace Plano            | L05699    | Plano         | 04          | 12/20/05       |
| Plano         | North Texas Regional Cancer Center                              | L05357    | Plano         | 04          | 12/29/05       |
| San Antonio   | Christus Santa Rosa Health Care                                 | L02237    | San Antonio   | 87          | 12/21/05       |
| San Antonio   | South Texas Radiology Imaging Centers                           | L00325    | San Antonio   | 143         | 12/22/05       |
| San Antonio   | Southwest Research Institute                                    | L04958    | San Antonio   | 11          | 12/29/05       |
| Sherman       | Texas Oncology PA<br>DBA Texas Cancer Center Sherman            | L05019    | Sherman       | 12          | 12/29/05       |
| Sweeny        | Conocophillips Company<br>Sweeny Complex                        | L00337    | Sweeny        | 45          | 12/21/05       |
| Sweetwater    | Rolling Plains Memorial Hospital                                | L02550    | Sweetwater    | 22          | 12/23/05       |
| Temple        | Wilsonart International   | L02857    | Temple        | 21          | 12/29/05       |
| Terrell       | Terrell Healthcare LP<br>DBA Medical Center at Terrell          | L03048    | Terrell       | 18          | 12/28/05       |
| Texarkana     | Alumax Mill Products Inc  | L04663    | Texarkana     | 11          | 12/21/05       |
| Trophy Club   | Trophy Club Medical Center LP<br>DBA Trophy Club Medical Center | L05827    | Trophy Club   | 03          | 12/29/05       |
| Tyler         | The University of Texas<br>Health Center at Tyler               | L01796    | Tyler         | 60          | 12/21/05       |
| Wichita Falls | United Regional Health Care System Inc                          | L00350    | Wichita Falls | 100         | 12/22/05       |
| Throughout Tx | Solutia Inc   | L00219    | Alvin         | 74          | 12/22/05       |
| Throughout Tx | MPM Products Inc  | L00967    | Arlington     | 37          | 12/22/05       |
| Throughout Tx | MLA Labs Inc  | L01820    | Austin        | 30          | 12/23/05       |
| Throughout Tx | Kooney X-Ray Inc  | L01074    | Barker        | 100         | 12/21/05       |
| Throughout Tx | Gulf Coast Weld Spec  | L05426    | Beaumont      | 39          | 12/28/05       |
| Throughout Tx | Brazos Valley Inspection Services Inc                           | L02859    | Bryan         | 48          | 12/29/05       |
| Throughout Tx | CTL Thompson Texas LLC  | L04900    | Dallas        | 10          | 12/20/05       |
| Throughout Tx | The Dow Chemical Company Texas<br>Operations                    | L00451    | Freeport      | 80          | 12/16/05       |
| Throughout Tx | Professional Service Industries Inc                             | L00931    | Fort Worth    | 114         | 12/21/05       |

## AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

| Location      | Name   | License # | City          | Amendment # | Date of Action |
|---------------|--|-----------|---------------|-------------|----------------|
| Throughout Tx | Richardson Associates<br>DBA Nuclear Measurement Services or<br>Richardson Calibration | L02889    | Haltom City   | 19          | 12/29/05       |
| Throughout Tx | General Inspection Services Inc  | L02319    | Hempstead     | 39          | 12/22/05       |
| Throughout Tx | Aitec USA Inc  | L05718    | Houston       | 17          | 12/30/05       |
| Throughout Tx | Baker Oil Tools  | L03272    | Houston       | 26          | 12/29/05       |
| Throughout Tx | Fugro Consultants LP   | L00058    | Houston       | 49          | 12/22/05       |
| Throughout Tx | Irisndt Inc  | L04769    | Houston       | 23          | 12/13/05       |
| Throughout Tx | Stork Southwestern Laboratories Inc  | L00299    | Houston       | 125         | 12/21/05       |
| Throughout Tx | Apollo Perforators Inc   | L03020    | Odessa        | 16          | 12/30/05       |
| Throughout Tx | Cottons Inspection Service Inc   | L02869    | Odessa        | 17          | 12/29/05       |
| Throughout Tx | Fugro Consultants LP   | L04322    | Pasadena      | 80          | 12/21/05       |
| Throughout Tx | Midwest Inspection Services  | L03120    | Perryton      | 84          | 12/20/05       |
| Throughout Tx | Reece Albert Inc   | L02296    | San Angelo    | 15          | 12/28/05       |
| Throughout Tx | Southwest Research Institute   | L00775    | San Antonio   | 75          | 12/29/05       |
| Throughout Tx | Production Logging Inc   | L02698    | Snyder        | 22          | 12/23/05       |
| Throughout Tx | Weaver Services Inc<br>DBA WSI Cased Hold Specialist                                   | L01489    | Snyder        | 27          | 12/21/05       |
| Throughout Tx | GCT Inspection Inc   | L02378    | South Houston | 89          | 12/21/05       |
| Throughout Tx | GCT Inspection Inc   | L02378    | South Houston | 90          | 12/29/05       |
| Throughout Tx | Schlumberger Technology Corporation  | L00109    | Sugar Land    | 50          | 12/20/05       |
| Throughout Tx | Thermo Measuretech   | L03524    | Sugar Land    | 70          | 12/27/05       |
| Throughout Tx | ETTL Engineers & Consultants Inc   | L01423    | Tyler         | 34          | 12/21/05       |
| Throughout Tx | Invista Sarl   | L00386    | Victoria      | 78          | 12/21/05       |
| Throughout Tx | City of Wichita Falls Public Works<br>Engineering Division                             | L03217    | Wichita Falls | 14          | 12/20/05       |

## RENEWAL OF LICENSES ISSUED:

| Location   | Name  | License # | City       | Amendment # | Date of Action |
|------------|---|-----------|------------|-------------|----------------|
| Amarillo   | Amarillo Heart Group LLP<br>DBA Amarillo Heart Group                                | L04697    | Amarillo   | 19          | 12/22/05       |
| Austin     | High End Systems Inc  | L04908    | Austin     | 04          | 12/22/05       |
| Donna      | E I Dupont De Nemours & Company<br>DBA Dupont Crop Protection                       | L04566    | Donna      | 05          | 12/28/05       |
| El Paso    | El Paso Healthcare System LP<br>DBA Del Sol Diagnostic Center                       | L03395    | El Paso    | 41          | 12/29/05       |
| Houston    | Texas Nuclear Imaging Inc<br>DBA Excel Diagnostics Imaging Clinic<br>Medical Center | L05009    | Houston    | 27          | 12/19/05       |
| Waxahachie | Baylor Medical Center at Waxahachie   | L04536    | Waxahachie | 26          | 12/29/05       |

## TERMINATIONS OF LICENSES ISSUED:

| Location | Name                             | License # | City   | Amendment # | Date of Action |
|----------|----------------------------------|-----------|--------|-------------|----------------|
| Austin   | Austin Cardiovascular Associates | L05172    | Austin | 11          | 12/23/05       |
| Denton   | Neorx Manufacturing Group Inc    | L05433    | Denton | 15          | 12/20/05       |

## EXEMPTIONS OF LICENSES ISSUED:

| Location | Name   | License # | City | Amendment # | Date of Action |
|----------|--|-----------|------|-------------|----------------|
| Waco     | Baylor University<br>Environmental Health & Safety | L01136    | Waco |             | 12/23/05       |

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49<sup>th</sup> Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200600148  
Cathy Campbell  
General Counsel  
Department of State Health Services  
Filed: January 11, 2006

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Alcoa World Alumina Atlantic

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Alcoa World Alumina Atlantic (license #L05186-000) of Point Comfort. A total penalty of \$18,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600153  
Cathy Campbell  
General Counsel  
Department of State Health Services  
Filed: January 11, 2006

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Gulf Coast Cancer Center

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Gulf Coast Cancer Center (license #L05194-000) of Pasadena. A total penalty of \$4,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600149  
Cathy Campbell  
General Counsel  
Department of State Health Services  
Filed: January 11, 2006

◆ ◆ ◆

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Houston Northwest Medical Center

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Houston Northwest Medical Center (license #L02253-000) of El Paso. A total penalty of \$4,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600151  
Cathy Campbell  
General Counsel  
Department of State Health Services  
Filed: January 11, 2006

◆ ◆ ◆

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Spohn Hospital

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Spohn Hospital (license #L02495-000) of Corpus Christi. A total penalty of \$4,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600150  
Cathy Campbell  
General Counsel  
Department of State Health Services  
Filed: January 11, 2006

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Wadley Regional Medical Center

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Wadley Regional Medical Center (license #L02486-000) of Texarkana. A total penalty of \$4,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600152  
Cathy Campbell  
General Counsel  
Department of State Health Services  
Filed: January 11, 2006

### Notice of Revocation of Certificates of Registration

The Department of State Health Services, having duly filed complaints pursuant to 25 TAC §289.205, has revoked the following certificates of registration: Joe W. Watts, D.D.S., Dallas, R05494, December 28, 2005; Ross P. Kennedy, D.D.S., Inc., Houston, R06492, December 28, 2005; Arnold Ravdel, M.D., Houston, R09064, December 28, 2005; Teredyne, Inc., Poway, California, R14450, December 28, 2005; TSC Dental Center, Houston, R15353, December 28, 2005; Clinica Espana, Dallas, R16135, December 28, 2005; Crown Chiropractic Clinic, Houston, R16177, December 28, 2005; Southwest Therapies Partnership, Albuquerque, New Mexico, R18309, December 28, 2005; KGB Medical Inc., Waco, R19965, December 28, 2005; Robert L. Brannon, M.D., F.A.C.O.G., Dallas, R21383, December 28, 2005; Tower Medical Center of Vidor, PA, Vidor, R22097, December 28, 2005; Wipf Chiropractic of Pharr, Inc., Pharr, R25809, December 28, 2005; Ella Family Medicine, PA, Houston, R25912, December 28, 2005; Ernest T. Roman, M.D., Pharr, R26571, December 28, 2005; Cornerstone Chiropractic & Health, Wharton, R27128, December 28, 2005; Big Grin Incorporated, Haltom City, R27876, December 28, 2005; Jerry F. Castillija, M.D., Seguin, R28057, December 28, 2005; Troxia Entertainment, Gaithersburg, Maryland, Z01706, December 28, 2005.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600155  
Cathy Campbell  
General Counsel  
Department of State Health Services  
Filed: January 11, 2006

### Notice of Revocation of the Radioactive Material License of Texas Steel Company

The Department of State Health Services, having duly filed complaints pursuant to 25 TAC §289.205, has revoked the following radioactive material license: Texas Steel Company, Fort Worth, L00163, December 28, 2005.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200600154  
Cathy Campbell  
General Counsel  
Department of State Health Services  
Filed: January 11, 2006

## Texas Health and Human Services Commission

### Notice of Hearing on Proposed Provider Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on February 15, 2006, to receive public comment on proposed Medicaid payment rates for state-operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) small facilities. The state-operated ICF/MR program is operated by the Texas Department of Aging and Disability Services (DADS). These payment rates are proposed to be effective as of September 1, 2005. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g) and §355.201, which require public hearings on proposed payment rates.

The public hearing will be held on February 15, 2006, at 1:30 p.m. in the Lone Star Conference Room of the Braker Center Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m., the day of the hearing. Written comments may be sent by U. S. mail to the attention of Joyce Felix, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101. Express mail can be sent, or written comments can be hand delivered, to Ms. Felix, HHSC Rate Analysis, MC H-400, Braker Center Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Felix at (512) 491-1998. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Joyce Felix, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101, telephone number (512) 491-1174, on or after February 1, 2006.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Joyce Felix, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101, telephone number (512) 491-1174, by February 5, 2006, so that appropriate arrangements can be made.

Proposal. As the single state agency for the state Medicaid program, HHSC proposes new rates for the state-operated ICF/MR program operated by DADS. Payment rates effective as of September 1, 2005, are proposed as follows:

#### State-Operated ICF/MR Small Facilities

Current Rates - \$199.04

Proposed Rates - \$223.98

Methodology and justification. The proposed rates were determined in accordance with the rate setting methodology codified as 1 TAC §355.456, relating to Reimbursement Rates.

TRD-200600168  
Wendy Pellow  
Assistant General Counsel  
Texas Health and Human Services Commission  
Filed: January 11, 2006

## Texas Department of Housing and Community Affairs

### Notice of Public Hearing

#### **Multifamily Housing Revenue Bonds (Skyline at City Park Apartments) Series 2006**

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Carter G. Woodson Middle School, 10720 Southview, Houston, Harris County, Texas 77047, at 6:00 p.m. on February 8, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$13,300,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Skyline at City Park, LP, a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 248-unit multifamily residential rental development located approximately between the 1500 and 2500 blocks of West Orem Drive and approximately one-quarter mile east of FM 521, on the north side of West Orem Drive and approximately 1.12 miles west of State Highway 288, Harris County, Texas. A physical address has not been assigned by the City of Houston. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701; (512) 475-3344; and/or [teresa.morales@tdhca.state.tx.us](mailto:teresa.morales@tdhca.state.tx.us).

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200600158

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: January 11, 2006



## Houston-Galveston Area Council

### Public Meeting Notice

#### **Request for Proposals and Qualifications Submittals for a Public Relations Agency (TRN 04-4662-05)**

The Houston-Galveston Area Council (H-GAC) of Harris County, Texas, is requesting proposals and qualifications submittals for a public relations agency to provide public relations services for Clean Air Initiatives and the Commute Solutions Program. These programs serve

the Houston-Galveston region classified as "Moderate" non-attainment for ground-level ozone air pollution, which includes Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties.

A Pre-Proposal Conference is scheduled at **1:30 p.m. on Tuesday, January 10, 2006**, at H-GAC's offices. Submittals are due by **12:00 p.m. (noon) on Tuesday, January 31, 2006**. Late submittals will **NOT** be accepted. Twelve (12) typewritten, bound/stapled and signed copies are required.

Oral Presentations are scheduled at 9:00 a.m. on Thursday, February 9, 2006 at H-GAC's offices.

The Request for Proposal and Qualifications Submittal packet can be downloaded from the H-GAC Transportation Department Web site at **[www.h-gac.com/transportation](http://www.h-gac.com/transportation)**. Interested firms may also obtain the packet at the H-GAC offices at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, or by contacting Shelley A. Whitworth at (713) 627-3200. All questions regarding the Request for Proposals must be made in writing by 9:00 a.m. on January 9, 2006, and can be sent to the attention of Shelley A. Whitworth by e-mail to [shelley.whitworth@h-gac.com](mailto:shelley.whitworth@h-gac.com), faxed to (713) 993-4508, or mailed to the Houston-Galveston Area Council, P. O. Box 22777, Houston, TX 77227-2777.

TRD-200600163

Alan C. Clark

MPO Director

Houston-Galveston Area Council

Filed: January 11, 2006



### Public Meeting Notice

#### **Request for Proposals and Qualifications Submittals for an Advertising Agency (TRN 06-4662-04)**

The Houston-Galveston Area Council (H-GAC) of Harris County, Texas, is requesting proposals and qualifications submittals for an advertising agency to provide advertising and marketing services for Clean Air Initiatives and the Commute Solutions Program. These programs serve the Houston-Galveston region classified as "Moderate" non-attainment for ground-level ozone air pollution, which includes Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties.

A Pre-Proposal Conference is scheduled at **3:00 p.m. on Tuesday, January 10, 2006**, at H-GAC's offices. Submittals are due by **12:00 p.m. (noon) on Tuesday, January 31, 2006**. Late submittals will **NOT** be accepted. Twelve (12) typewritten, bound/stapled and signed copies are required.

Oral Presentations are scheduled at 11:00 a.m. on Thursday, February 9, 2006, at H-GAC's offices.

The Request for Proposal and Qualifications Submittal packet can be downloaded from the H-GAC Transportation Department Web site at **[www.h-gac.com/transportation](http://www.h-gac.com/transportation)**. Interested firms may also obtain the packet at the H-GAC offices at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, or by contacting Shelley A. Whitworth at (713) 627-3200. All questions regarding the Request for Proposals must be made in writing by 9:00 a.m. on January 9, 2006, and can be sent to the attention of Shelley A. Whitworth by e-mail to [shelley.whitworth@h-gac.com](mailto:shelley.whitworth@h-gac.com), faxed to (713) 993-4508, or mailed to the Houston-Galveston Area Council, P. O. Box 22777, Houston, TX 77227-2777.

TRD-200600164



Alan C. Clark  
MPO Director  
Houston-Galveston Area Council  
Filed: January 11, 2006

Public Meeting Notice

**Request for Proposals and Qualifications Submittals for Non-Road Mobile Source Emissions Inventory (TRN 06-6420-01)**

The Houston-Galveston Area Council (H-GAC) of Harris County, Texas, is requesting proposals and qualification submittals for a consultant to update the current Texas Commission on Environmental Quality emissions non-road mobile source inventory for the Houston/Galveston non-attainment area. This project will serve the Houston-Galveston region classified as "Moderate" non-attainment for ground-level ozone air pollution, which includes Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller counties.

Submittals are due by **4:00 p.m. on Monday, January 30, 2006**. Late submittals will **NOT** be accepted. Five (5) typewritten, bound/stapled and signed copies are required.

The Request for Proposal and Qualifications Submittal packet can be downloaded from the H-GAC Transportation Department Web site at **[www.h-gac.com/transportation](http://www.h-gac.com/transportation)**. Interested firms may also obtain the packet at the H-GAC offices at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, or by contacting Shelley A. Whitworth at (713) 627-3200. All questions regarding the Request for Proposals must be made in writing and can be sent to the attention of Shelley A. Whitworth by e-mail to [shelley.whitworth@h-gac.com](mailto:shelley.whitworth@h-gac.com), faxed to (713) 993-4508, or mailed to the Houston-Galveston Area Council, P. O. Box 22777, Houston, TX 77227-2777.

TRD-200600165  
Alan C. Clark  
MPO Director  
Houston-Galveston Area Council  
Filed: January 11, 2006

Public Meeting Notice

**Request for Proposals and Qualifications Submittals for Pedestrian and Bicyclist Districts Conceptual Plan and Project for the City of Galveston (TRN 06-6430-01)**

The Houston-Galveston Area Council (H-GAC) of Harris County, Texas, is requesting proposals and qualifications submittals for the Pedestrian and Bicyclist Districts Conceptual Plan and Project for the City of Galveston. The consultant team will work with the local community stakeholders to develop a comprehensive plan of pedestrian-bicyclist improvements and calculate the congestion mitigation, air quality, and safety benefits of implementing the projects. H-GAC will pursue local sponsorship and the programming of the pilot project in its Transportation Improvement Program (TIP).

A Pre-Proposal Conference is scheduled at **2:00 p.m. on Monday, January 23, 2006**, at H-GAC's offices. Submittals are due **promptly by 4:30 p.m. on Wednesday, February 8, 2006**. Late submittals will **NOT** be accepted. Eight (8) typewritten, bound/stapled and signed copies are required.

The Request for Proposal and Qualifications Submittal packet can be downloaded from the H-GAC Transportation Department Web site at **[www.h-gac.com/transportation](http://www.h-gac.com/transportation)**. Interested firms may also obtain the

packet at the H-GAC offices at 3555 Timmons Lane, Suite 120, Houston, Texas 77027, or by contacting Dan Raine, AICP, Pedestrian-Bicyclist Coordinator, at (832) 681-2525. All questions regarding the Request for Proposals must be made in writing by February 6, 2006 at 4:30 p.m., promptly, and can be sent by e-mail to **[dan.raine@h-gac.com](mailto:dan.raine@h-gac.com)**, faxed to (713) 993-4508, or mailed to the Houston-Galveston Area Council, P. O. Box 22777, Houston, TX 77227-2777.

TRD-200600166  
Alan C. Clark  
MPO Director  
Houston-Galveston Area Council  
Filed: January 11, 2006

Request for Proposals

The Houston-Galveston Area Council (H-GAC) is soliciting qualified training providers to provide intensive short-term skills training to Hurricane Katrina/Rita impacted individuals. The goal of the training is to provide these individuals with employment opportunities in high skilled, high demand industries in the storm affected areas of the Gulf Coast region. We are soliciting training that will be offered only to evacuees from storm-damaged areas. A proposal package is available for download at <http://theworksource.org/4contractor/rfp.html> and <http://h-gac.com>. Hard copies of the proposal package are also available. There is not a bidder's conference for this procurement. Proposals are due at H-GAC offices on or before 5:00 p.m. Central Daylight Time on Monday, January 23, 2006. H-GAC will not accept late proposals; we will make no exceptions. Prospective bidders may contact Carol Kimmick at (713) 627-3200 or [ckimmick@theworksource.org](mailto:ckimmick@theworksource.org) or visit the web site to request a proposal package.

TRD-200600094  
Jack Steele  
Executive Director  
Houston-Galveston Area Council  
Filed: January 6, 2006

Texas Department of Insurance

Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2633, on January 31, 2006, at 10:30 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider the appointment of a public member representative to the Windstorm Building Code Advisory Committee on Specifications and Maintenance (Committee).

Article 21.49 §6C of the Insurance Code provides for the appointment of an advisory committee to advise and make recommendations to the Commissioner on building requirements and maintenance in the plan of operation of the Texas Windstorm Insurance Association (TWIA). Article 21.49 §6C also specifies the membership of the Committee: three public members who reside in designated catastrophe areas, three building industry members who reside in designated catastrophe areas, and three members who must be representatives of the insurance industry.

The Commissioner will consider the appointment of Paul Y. Cunningham, Jr., attorney, of South Padre Island, Texas as a public member.

The Committee member will serve a three year term beginning on March 1, 2006 and expiring on March 1, 2009.

The hearing is held pursuant to the Insurance Code, Article 21.49 §5A, which provides that the Commissioner, after notice and hearing, may issue any orders considered necessary to carry out the purposes of Article 21.49 (Texas Windstorm Insurance Association Act), including, but not limited to, maximum rates, competitive rates, and policy forms. Any person may appear and testify for or against the proposed appointment.

TRD-200600140  
Gene C. Jarmon  
Chief Clerk and General Counsel  
Texas Department of Insurance  
Filed: January 10, 2006

## North Central Texas Council of Governments

### Request for Proposals

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) continues to be involved with projects that are intended to reduce transportation related injuries and fatalities, improve overall system safety and security, and reduce incident clearance times on our freeways and tollways. Inter-agency awareness amongst emergency responders reporting to major incidents on our regional freeway system is a key aspect to improving the safety and security of the overall system and its users. With the recognized need for uniform communication between all emergency responder agencies within the region, NCTCOG is requesting written proposals from consultant firms to conduct a study that will investigate the possible incorporation of the region's Regional Data and Video Communication System and the Center-to-Center Communication Software to create an Emergency Responders Uniform Communication System. The study should focus on a system that will utilize the region's existing Intelligent Transportation System (ITS) infrastructure to develop a hardware/software solution that uses existing IP networks and encrypted wireless technology to send and receive video, photos, and data across a variety of platforms. This system should support a mobile communication system for first responders and regional homeland security fusion centers to exchange live video, photos and forms.

The timetable for completion of this project should not exceed nine months from the date the consultant firm is authorized to proceed.

#### Due Date

Proposals must be received no later than 5 p.m. Central Daylight Time on Friday, February 24, 2006, to Natalie Bettger, Senior Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon, at (817) 695-9267.

#### Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

#### Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200600055  
R. Michael Eastland  
Executive Director  
North Central Texas Council of Governments  
Filed: January 4, 2006

### Request for Proposals

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) developed an Air Quality Public Education and Information Program to promote transportation-related clean air strategies and activities in the Dallas-Fort Worth (DFW) nine-county nonattainment area (including Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties) through a community awareness campaign. This Request for Proposal (RFP) is for an entity to be the marketing consultant for the Air Quality Public Education and Information Program; which entails developing and implementing creative materials, coordinating outreach events for the general public and business community awareness campaign associated with the Air Quality Public Education and Information Program as well as for other NCTCOG air quality marketing needs. A separate RFP was issued for an entity to manage the operations and activities of a business community awareness campaign, pilot program, and to perform outreach to the North Texas business community. NCTCOG staff will be implementing, with the assistance of the selected marketing consultant, all aspects of the general public air quality awareness campaign. NCTCOG will also work as a liaison between the entity managing the business community awareness program and marketing consultant. The consultant's tasks are scheduled to be completed by December 31, 2006; however, the majority of the work is expected to take place during Ozone Season, which is May 1 - October 31.

#### Due Date

Proposals must be received no later than 5 p.m. Central Daylight Time, on Friday, February 10, 2006, to Chris Klaus, Senior Program Manager, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon, at (817) 695-9267.

#### Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

#### Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200600056

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: January 4, 2006

## **Texas Department of Public Safety**

### **Consultant Contract Award**

(1) The Texas Department of Public Safety (Department), in accordance with the provisions of Texas Government Code, Chapter 2254, announces the awarding of a consultant contract for a study of the current Active Countermeasures Training program utilized by the Department to train our Trooper-Trainees in the Training Academy on Arrest and Control tactics and to advise the agency on new or alternative training programs, methodologies, techniques, equipment, or other related factors that could improve and/or enhance the safety and overall effectiveness of the program.

(2) The Request for Proposal (RFP) was published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6826).

(3) The selected consultant will be required to conduct an evaluation of the Department's Active Countermeasures Training program in relationship with the current theories and methodologies, and training techniques used by law enforcement training agencies of similar size and responsibilities throughout the nation. The scope of the project will include, as a minimum:

(A) An evaluation of the training theory which serves as the basis of the current Active Countermeasures program used by the Department as a practical tool for the preparation of our recruits to perform the duties of Troopers.

(B) An evaluation of the training methodology of the current Active Countermeasures program used by the Department as a practical tool for the preparation of our recruits to perform the duties of Troopers.

(C) An inspection of the current training venues and equipment used by the Department for the preparation of our recruits to perform the duties of Troopers.

(D) An evaluation of the qualifications and expertise of current Department instructors who provide instructions in Active Countermeasures theories and training in the actual techniques and control mechanisms needed to prepare our recruits to perform the duties of Troopers.

(E) An evaluation of the agency's medical pre-employment screening requirements for applicants to the recruit school to determine if the use of these requirements are sufficient to identify those applicants with pre-existing medical conditions who would be considered susceptible to a high risk of further injury by participating in the rigors of the Active Countermeasures training program.

(F) An evaluation of the Physical Training (PT) program as it relates to its safety and effectiveness in preparing the recruits mentally and physically to participate in the Active Countermeasures training program.

(G) An evaluation of the procedures used by the Training Academy staff to monitor the welfare of the recruits participating in the Physical Training (PT) and the Active Countermeasures programs to determine if the proper safeguards for identifying, evaluating, and responding to injuries are in place.

(4) 405-HQ6-9022 was awarded to the following vendor:

The Gables Group Inc., 10540 N.W. 26th Street, Miami, Florida 33172.

(5) This contract has a total value not to exceed \$85,000 and begins on January 9, 2006 and ends on March 31, 2006.

(6) The due dates are as follows:

(A) Delivery of final report, March 2, 2006.

(B) Formal presentation to the Public Safety Commission To Be Determined (March, 2006).

TRD-200600127

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Filed: January 10, 2006

## **Public Utility Commission of Texas**

### **Announcement of Application for State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas (commission) received an application on January 4, 2006, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Grayson CableRocket, LLC for a State-Issued Certificate of Franchise Authority, Project Number 32230 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service area includes the City of Pottsboro only.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32230.

TRD-200600108

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: January 9, 2006

### **Announcement of Application for State-Issued Certificate of Franchise Authority**

The Public Utility Commission of Texas (commission) received an application on January 9, 2006, for a state-issued certificate of franchise authority (CFA), pursuant to Public Utility Regulatory Act (PURA) §§66.001 - 66.016. A summary of the application follows.

Project Title and Number: Application of Cable One, Incorporated for a State-issued Certificate of Franchise Authority, Project Number 32256 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service was unspecified in the application.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32256.

TRD-200600130  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 10, 2006



#### Notice of Application to Surrender Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on January 6, 2006, to surrender retail electric provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §§39.101 - 39.109. A summary of the application follows.

Docket Title and Number: Application of AmPro Energy, LP to Surrender its Retail Electric Provider (REP) certification, Docket Number 32242 before the Public Utility Commission of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than January 27, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32242.

TRD-200600132  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 10, 2006



#### Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on January 6, 2006, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of Southwestern Bell Telephone, L.P.'s, doing business as AT&T Texas (AT&T) request for a new code in the Houston rate center.

Docket Title and Number: Application of Southwestern Bell Telephone, L.P., doing business as AT&T Texas, for Waiver of Numbering Resources - Houston Rate Center. Docket Number 32254.

The Application: AT&T submitted an application to the Pooling Administrator (PA) to provide it with additional numbering resources on behalf of its customer, Houston Independent School District.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326,

Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than January 25, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32254.

TRD-200600131  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 10, 2006



#### Request for Comments

The Public Utility Commission of Texas (commission) is conducting a rulemaking to implement Senate Bill 20 (79th Legislature, 1st Called Session), relating to this state's goal for renewable energy. Project Number 31852, Rulemaking Relating to Renewable Energy Amendments, has been assigned to this rulemaking, which will amend P.U.C. Substantive Rule §25.173.

The commission requests that interested persons file comments on the following questions within 30 days of the date of publication of this notice. The questions are available on the project website at <http://www.puc.state.tx.us/rules/rulemake/index.cfm> under Project Number 31852. Comments may be filed by submitting 16 copies to the commission's filing clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711. All responses must reference Project Number 31852. The comments will be considered in preparing a proposed rule for publication pursuant to the Administrative Procedure Act.

1. How should the commission implement the provisions of Senate Bill 20 relating to the 500 MW non-wind target?
2. How should the commission implement the provisions of Senate Bill 20 relating to determining competitive renewable energy zones? Please comment on both criteria and procedures.
3. With respect to new subsection (l) of PURA Section 39.904, should the commission's substantive rules require renewable power facilities to have reactive power control capabilities or any other technology designed to reduce the facilities' effects on system reliability? If so, how specific should such requirements be in the rule, and to what extent should the commission delegate to the ERCOT stakeholder process the task of determining specific requirements for the ERCOT power region?
4. With respect to new subsection (m) of PURA Section 39.904, how should the commission's substantive rules be amended to ensure that all renewable capacity installed in this state and all renewable energy credits (RECs) awarded, produced, procured, or sold from renewable capacity in this state are counted towards the goal in PURA Section 39.904(a)?
5. With respect to new subsection (n) of PURA Section 39.904, should the commission cap the price of RECs? Does the current administrative penalty of \$50 per REC sufficiently fulfill the role of a price cap?
6. What other amendments to P.U.C. Substantive Rule §25.173 should the commission consider in conjunction with its implementation of Senate Bill 20? Please include a brief rationale for each proposed amendment.

Questions concerning this rulemaking should be referred to David Hurlbut, Wholesale Market Oversight, (512) 936-7387 or [david.hurlbut@puc.state.tx.us](mailto:david.hurlbut@puc.state.tx.us). Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200600133  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: January 10, 2006

## Texas Department of Transportation

### Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Greenville, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for the professional aviation engineering design services described below:

Airport Sponsor: City of Greenville, Majors Airport. TxDOT CSJ No.: 0601GRNVL. Scope: Provide engineering/design services to overlay and mark runway 17-35, mark and light parallel taxiway as a temporary runway, remove temporary runway markings from taxiway, and create a general aviation terminal area development plan for 167.5 acres locally known as Tract D.

Future work in the next five years may include engineering/design for elements identified in the General Aviation Terminal Area Development Plan.

The DBE goal is set at 7%. TxDOT Project Manager is Alan Schmidt, P. E. Terminal Area Development Plan Project Manager is Sandra Gaither.

To assist in your proposal preparation, the most recent Airport Layout Plan and 5010 drawing are available online at [www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm](http://www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm) by selecting "Majors Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn550.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Six completed, unfolded copies of Form AVN-550 must be postmarked by U. S. Mail by midnight Friday, February 10, 2006. Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on Monday, February 13, 2006. Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. Monday, February 13, 2006. Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by e-mail will not be

accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The Consultant Selection Committee (Committee) will be composed of Aviation Division staff members and one local government member. The final selection by the Committee will generally be made following the completion of review of proposals. The Committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at [www.dot.state.tx.us/business/avn-consultinfo.htm](http://www.dot.state.tx.us/business/avn-consultinfo.htm). All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The Committee does, however, reserve the right to conduct interviews of the top rated firms if the Committee deems it necessary. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Alan Schmidt, P. E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200600129  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Filed: January 10, 2006

## University of North Texas

### Consultant Contract Notification

Invitation for Consultants to Provide Offers of Consulting Services related to assisting the University of North Texas Office of Student Accounting in cost evaluations of the discount and other processing fees assessed for the payment of student tuition and fees when using Mastercard, Visa, Discover, or American Express for payment of tuition and student fees.

Pursuant to the provisions of Texas Government Code, Chapter 2254, the University of North Texas (UNT) extends this invitation (Invitation) to qualified and experienced consultants interested in providing the consulting services described in this Invitation to UNT.

#### Scope of Work:

The selected consulting firm will be responsible for assisting UNT in cost evaluations of the discount and other processing fees assessed for the payment of student tuition and fees when using Mastercard, Visa, Discover, or American Express for payment of tuition and student fees. The consulting services will include, but not necessarily be limited to, the following: conduct research and analysis on UNT's current processing services for the payment of tuition and fees by credit and debit cards; conduct a cost evaluation based on sales/payment activity since September 2004; make recommendations for credit and debit card processing service; make recommendations for cost evaluations of the discount and other processing fees assessed for the payment of student tuition and fees; and must be able to implement said strategies to lower fees and monitor merchant processing statements for 2 years and to ensure that such changes are permanent.

#### Specifications:

Any consultant submitting an offer in response to this Invitation must provide the following: (1) the consultant's legal name, including type of entity (individual, partnership, corporation, etc.) and address; (2) background information regarding the consultant, including the number of years in business and the number of employees; (3) information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services; (4) the hourly rate to be charged for each team member providing services; (5) the earli-

est date by which the consultant could begin providing the services; (6) a list of five client references, including any complex institutions or systems of higher education for which the consultant has provided similar consulting services; (7) a statement of the consultant's approach to providing the services described in the Scope of Work section of this Invitation, any unique benefits the consultant offers UNT, and any other information the consultant desires UNT to consider in connection with the consultant's offer; (8) information to assist UNT in assessing the consultant's demonstrated competence and experience providing consulting services similar to the services requested in this Invitation; (9) information to assist UNT in assessing the consultant's experience performing the requested services for other complex institutions or systems of higher education; (10) information to assist UNT in assessing whether the consultant will have any conflicts of interest in performing the requested services; (11) information to assist UNT in assessing the overall cost to UNT for the requested services to be performed; and (12) information to assist UNT in assessing the consultant's capability and financial resources to perform the requested services.

#### Selection Process:

Selection of the Successful Offer (defined below) submitted in response to this Invitation by the Submittal Deadline (defined below) will be made using the competitive process described below. After the opening of the offers and upon completion of the initial review and evaluation of the offers submitted, selected consultants may be invited to participate in oral presentations. The selection of the Successful Offer may be made by UNT on the basis of the offers initially submitted, without discussion, clarification or modification. In the alternative, selection of the Successful Offer may be made by UNT on the basis of negotiation with any of the consultants. At UNT's sole option and discretion, it may discuss and negotiate all elements of the offers submitted by selected consultants within a specified competitive range. For purposes of negotiation, a competitive range of acceptable or potentially acceptable offers may be established comprising the highest rated offers. UNT will provide each consultant within the competitive range with an equal opportunity for discussion and revision of its offer. UNT will not disclose any information derived from the offers submitted by competing consultants in conducting such discussions. Further action on offers not included within the competitive range will be deferred pending the selection of the Successful Offer; however, UNT reserves the right to include additional offers in the competitive range if deemed to be in its best interest. After the submission of offers but before final selection of the Successful Offer is made, UNT may permit a consultant to revise its offer in order to obtain the consultant's best final offer. UNT is not bound to accept the lowest priced offer if that offer is not in its best interest, as determined by UNT. The University of Texas reserves the right to: (a) enter into agreements or other contractual arrangements for all or any portion of the Scope of Work set forth in this Invitation with one or more consultants; (b) reject any and all offers and re-solicit offers; or (c) reject any and all offers and temporarily or permanently abandon this procurement, if deemed to be in the best interest of UNT.

#### Criteria for Selection:

The successful offer (Successful Offer) must be submitted in response to this Invitation by the Submittal Deadline and will be the offer that is the most advantageous to UNT in UNT's sole discretion. Offers will

be evaluated by the University of North Texas and member institution personnel. The evaluation of offers and the selection of the Successful Offer will be based on the information provided to UNT by the consultant in response to the Specifications section of this Invitation. Consideration may also be given to any additional information and comments if such information or comments increase the benefits to UNT. The successful consultant will be required to enter into a contract acceptable to UNT.

#### Consultant's Acceptance of Offer:

Submission of an offer by a consultant indicates: (1) the consultant's acceptance of the Offer Selection Process, the Criteria for Selection, and all other requirements and specifications set forth in this Invitation and (2) the consultant's recognition that some subjective judgments must be made by UNT during this Invitation process.

#### Finding by President:

The President of the University of North Texas finds that the consulting services are necessary because UNT does not have the specialized experience or the staff resources available for the cost evaluations of the discount and other processing fees assessed for the payment of student tuition and fees when using Mastercard, Visa, Discover, or American Express for payment of tuition and student fees. The University of North Texas believes that such expert consulting services will be cost effective by reducing the processing fees that are assessed for the payment of student tuition and fees by credit/debit cards.

#### Submittal Deadline:

To respond to this Invitation, consultants must submit the information requested in the Specification section of this Invitation and any other relevant information in a clear and concise written format to: Chris McCaskill, Purchasing Specialist IV, University of North Texas, 2310 North Interstate 35-E, P. O. Box 310499, Denton, Texas 76201. Offers must be submitted in an envelope or other appropriate container, and the name and return address of the consultant must be clearly visible. All offers must be received at the above address no later than 1:00 p.m., CDT, Monday, February 20, 2006 (Submittal Deadline). Submissions received after the Submittal Deadline will not be considered.

#### Questions:

Questions concerning this Invitation should be directed to: Chris McCaskill, Purchasing Specialist IV, University of North Texas, 2310 North Interstate 35-E, P. O. Box 310499, Denton, Texas 76201. UNT may in its sole discretion respond in writing to questions concerning this Invitation. Only UNT's responses made by formal written addenda to this Invitation shall be binding. Oral or other written interpretations or clarifications shall be without legal effect.

TRD-200600109

Sandy Shelton

Contract Administration Manager

University of North Texas

Filed: January 9, 2006

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### How to Use the Texas Register

**Information Available:** The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules** - sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules** - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

**How to Research:** The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite:** Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

*Part I. Texas Department of Human Services*

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).